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ABSTRACT

Ten agencies in New York State provide educational services to over 46,000 children (daily average) in state care or custody. This audit report, through verbal and statistical summaries, evaluates these agencies' performance. Chapter I provides background data, describes the scope of the audit, and discusses state laws and regulations designed to guarantee educational opportunity for children in custody. Chapter II presents information on programs directly supervised by the state education department (SED), including placement statistics; educational program standards; monitoring procedures; the state comptroller's review of SED's oversight methods; eligibility criteria, placement procedures, and funding consideration for two types of special schools; and overall program costs. Chapter III reviews the other nine agencies' programs, including the populations served and their needs, services provided and their administration, and these programs' compliance with SED standards. Chapter IV compares the various agencies' roles and responsibilities, funding mechanisms, and compliance with SED standards. Finally, appendixes provide (1) a list of state officials contacted for this study; (2) tables showing placement data, population characteristics, and program expenditures; and (3) agencies' comments on this report. (MCG)

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Legislative Commission On Expenditure Review

Education of Children under State Care or Custody

EA 017 094

Program Audit
November 1993

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LEGISLATIVE COMMISSION ON EXPENDITURE REVIEW
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EDUCATION OF CHILDREN UNDER STATE CARE OR CUSTODY

SUMMARY AND CONCLUSIONS

During 1982 an estimated 120,000 school age children were under the care or supervision of New York State or its political subdivisions. On any given day there were over 46,000 such children. Ten State agencies operated, funded or supervised full-time residential care of children as a result of voluntary or court ordered placement or because of health or educational reasons.

Under the Compulsory Education Law, the ten State agencies are responsible for assuring that school age-school eligible children in their care receive appropriate educational services. Youngsters between the ages of five and 21 who have not graduated from high school are eligible to attend school.

State law requires that children in full-time residental care of State agencies be accorded the same educational opportunities as those living at home and attending public school. This means that children are entitled to:

--Have their educational needs identified and served;

--Have access to a Committee on the Handicapped (COH) review, if a handicapping condition is suspected;

--Be placed in the least restrictive placement appropriate for their needs; and

--Have access to public school or BOCES, where feasible.

The State Education Department (SED) is responsible for adopting, maintaining and enforcing educational standards to achieve these legislative purposes. The ten State agencies and the number and characteristics of youngsters served are shown below:

Children in
Full-Time Residential Care
December 1982

State Agency	Estimated Number	General Characteristics
Department of Social Services (DSS)	26,753	In foster care
Division for Youth (DFY)	4,009	Delinquent and trouble prone
Commission of Correction (COC)	4,000	In local jail
Office of Mental Retardation and Developmental Disabilities (OMRDD)	3,510	Mentally retarded, autistic
Department of Correctional Services (DOCS)	3,500	Convicted felons
State Education Department (SED)	2,353	Educationally handicapped
Office of Mental Health (OMH)	1,186	Emotionally disturbed
Division for Youth (DFY)	550	In local detention
Division of Substance Abuse Services (DSAS)	374	Drug rehabilitation
Division of Alcoholism and Alcohol Abuse (DAAA)	13	In alcohol rehabilitation
Department of Health (DOH)	13	Physically handicapped
Total	46,261+	

Not shown is how many of the 46,261 children were eligible for educational services. Since some youths in foster care, jail, prison or rehabilitation programs had graduated from high school or had quit school, they would not be in educational programs.

These children have various problems and needs. About 26 percent were in custody because of adjudication or contact with the criminal justice system, while 16 percent had a handicapping condition. A significant number of children in care may have educational handicaps. Data on the number and/or types of handicaps of children in care were not available from DSS, COC, DFY (detention centers only), DAAA and DSAS.

Major Findings

Complete and accurate data on educational characteristics, placement, and progress of children in care were not available. Of the ten State agencies only OMRDD had educational performance information for all children in its care. For the other nine it was not possible to assess whether youngsters in care of State agencies were receiving appropriate instruction and making satisfactory educational progress.

While agencies operating their own schools evaluated their educational services, some did not provide educational oversight for their children placed in non-agency schools or schools in the community.

SED did not agree with the LCER audit report's statement that Education Law, Section 112 authorized the department to monitor the educational progress of non-handicapped public school children in foster care. SED believed that local school districts should monitor the educational performance of foster care children, just as they do for any other child. SED recommends that "If individual progress is to be monitored. . .it would more appropriately be a function of the State agency acting in the parent role for the individual." DSS, speaking for the local social services districts which have custody of foster care children, viewed educational progress monitoring as a SED function. Thus, it is unclear which State or local agency is responsible for the educational performance of school age foster care children. No State agency had assessed the adequacy of school district performance in serving children in foster care.

SED also did not agree with the program audit's statement that Education Law, Section 3202 (7) required school districts of residence to assure the continued education of children placed in detention centers. SED's interpretation is that the provisions of Education Law, Section 3202 (7) do not extend to youth in local detention facilities.

The State has a complex system of financing educational services for the ten agency child care system and fiscal incentives and disincentives may affect educational placement decisions. Furthermore, the payment process is cumbersome with respect to identifying and implementing tuition payment and would benefit from streamlining.

Though charged to oversee the education of children in State agency care, the State Education Department's oversight is hampered by (1) the system's program and financial complexity; (2) lack of direct financial control over the program; and (3) absence of a comprehensive data base on education of children in care of State agencies.

Direct Educational Services

Six State agencies operated schools serving 6,045 youngsters as of December 1982. Expenditures to operate the schools were about $38.8 million during the 1981-82 school year--$31.8 million State and $7.0 million federal.

Two categories of children were served: those with handicapping conditions and those in State custody. OMH, OMRDD, SED and DOH educated children with specific handicaps including the emotionally dis-

turbed, the mentally retarded and developmentally disabled, the deaf or blind and physically handicapped, respectively. These children generally had parents or guardians, but received full-time residential care because of their handicaps.

DOCS and DFY youths were sentenced or placed by the courts. Both agencies viewed education as an integral part of rehabilitation and operated remedial and vocational education programs because of the serious educational deficiencies of youngsters under their care. Educational handicaps were identified for 38 percent of the DFY youths but only four percent of DOCS' school age inmates. This contrast is largely attributable to DFY's performance of the COH function, while DOCS had not established such committees to perform the COH function as of March 1983.

The six State agencies provided policy direction, program oversight, and required that education goals be established for each child. Educational progress of children generally was monitored at the facility. While this program audit did not assess the effectiveness of agency or facility oversight, it did identify variations in policy among these agencies and education program gaps.

SED reviews of agency educational programs found varying degrees of compliance with SED standards for:

--Certification of instructional staff,

--Operation of a committee to perform the COH function,

--Due process procedures,

--Special education services,

--Reporting of educational progress, and

--Surrogate parents.

On the other hand, agencies generally complied with the 5 1/2 hour school day, 180 day school year, instruction equivalent to that offered in public schools, health services and diploma and certificate requirements.

Indirect Educational Services

SED, DSS, DFY and OMRDD provide educational services for about 8,000 children through tuition payments or reimbursement of educational costs. Additionally, a few children residing in OMH psychiatric centers attended 853 schools, and OMH paid the tuition costs for these children. An unknown number of foster care children residing in family care or group homes--who came into foster care prior to 1974--should be added to the 8,000 children.

In 1981-82, identifiable State tuition payments totalled $22.9 million. Local school district and social services district tuition expenses were not included in this amount, nor was an unknown State regular and excess cost aid reimbursement for the school services rendered.

The State agencies responsible for care provided limited oversight of the educational progress of childen in full-time residential care, but attending local schools. State agencies believed that monitoring the educational progress of these children was either a SED or a school district responsibility; thus, several of the agencies providing indirect educational services did not have information on the educational progress of children in their care.

Nominal Education Services

COC, DAAA and DSAS assumed little or no responsibility for the education of children under their care or under care of the local entities they oversaw. The three State agencies licensed or supervised locally operated full-time residential care programs. However, none of the agencies specifically required that the educational needs of children in care be identified and met. Agency licensure or supervision of local full-time residential care programs did not review whether education services for children in care were furnished and/or appropriate.

DSAS funds local substance abuse programs, and DAAA licenses local alcohol

abuse treatment programs. Both agencies considered it the local school district's responsibility to monitor or provide educational services for children. Neither agency checked to see if school districts were carrying out that responsibility.

As of March 31, 1983, SED had reviewed only two local programs--Rikers Island Correctional Facility under COC supervision and Spofford Juvenile Detention Center under DFY supervision--both in New York City.

Fiscal Implications of Funding

Tuition, maintenance (room and board) and pupil transportation funding for children in State agency care or custody are calculated in a variety of ways. These State reimbursements depend upon (1) the State agency or political unit placing the child, (2) the location or setting where the child is attending school, and/or (3) whether or not the child has a handicapping condition. By transferring a child to a different placement, it is possible to alter the method of paying for that child's education. Because State and local governments have a financial interest in the type of placement, these decisions might not always be made upon programmatic issues.

SED Oversight

While SED has broad responsibility to oversee the education of children in full-time residential care, the department has limited authority to enforce its standards in State agencies which are separately funded and not directly accountable to SED. State agencies have discretion in complying with these standards depending upon Division of Budget support for SED recommendations.

SED is required to oversee the educational programs provided to all children in full-time residential care. However, SED does not monitor the educational programs and progress of the large number of non-handicapped children who are placed in the community by State agencies. While monitoring educational progress of these children was viewed as a school district responsibility, no State agency was examining how well school districts were performing this function.

Conclusion

About 120,000 school age children, many with handicaps and some placed as a result of criminal activity, were under care or custody of State agencies or political subdivisions during 1982. Most of these children had special educational problems or needs.

Educational performance data were not available for the large number of children placed in the community because State agencies viewed this as a local school district responsibility. Appropriate educational programs were not always provided to children in jail, juvenile detention, nursing homes and drug and alcohol treatment.

Obstacles to effective oversight of education of children in State care or custody included:

--Lack of standardized educational progress information on each child;

--SED's inability to enforce its educational standards on independent State agencies;

--Lack of agreement among State agencies on the applicability of the State's Compulsory Education Law to their program;

--Failure of some State agency licensure and oversight activities to require conformance of local programs to the Compulsory Education Law.

The State has a complex system of financing educational services for children in the ten agency child care system. As a result of this, placement decisions for children may be made on the basis of fiscal considerations and not programmatic concerns.

Findings for Comment

Chapter 58 of the Laws of 1980 requires heads of audited agencies to report within 180 days of receipt of the final program audit to the Chairman of the Legislative Commission on Expenditure Review and the Chairmen and the Ranking Minority Members of the Senate Finance Committee and the Assembly Ways and Means Committee on what steps have been taken in response to findings and where no steps were taken, the reason why.

1. Though the Education Law intends that the educational progress of children in State care or custody be reviewed or monitored, State agency responsibilities for this function have not been clearly defined. A standardized approach to oversee a child's educational progress does not exist among the ten State agencies. (See pp. 45-49, 52-53, 66-68.)

2. The Education Law requires that school districts provide educational services for children placed in institutions providing care, custody, or treatment. SED interprets this statute to include children in hospitals and jails but to exclude those in local detention centers. If SED's interpretation is valid, one standard of educational performance and financing applies to children in detention while another standard applies to children in hospitals and jails. (See pp. 5, 44, 49.)

3. The variation and complexity of fiscal arrangements for educating children in State care and/or custody are detrimental to both equitable funding and effective educational programming. The payment and transfer process is cumbersome and its administration is costly. (See pp. 53-56, 67-68.)

4. Though charged to oversee the education of children in State agency care or custody, SED's oversight is hampered by (1) program and financial complexity; (2) lack of direct financial control; and (3) absence of a comprehensive data base on education of children in custody or care of State agencies. (See pp. 66-67.)

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FOREWORD

The Legislative Commission on Expenditure Review was established by Chapter 176 of the Laws of 1969 as a permanent legislative agency for among other duties, "the purpose of determining whether any such department or agency has efficiently and effectively expended funds appropriated by the Legislature for specific programs and whether such departments or agencies have failed to fulfill the legislative intent, purpose and authorization." This program audit, Education of Children Under State Care Or Custody, is the one hundred and tenth staff report.

The program audit reviews State agency programs educating about 46,000 children in State care or custody at any given time. Ten State agencies either provide direct educational services, pay tuition or assure that children under care are receiving appropriate education under the Compulsory Education Law.

Major problems identified include: the lack of clear responsibility for monitoring the educational progress of children in care and the variety and complexity of the multiagency educational funding arrangements. These problems exceed any single agency's responsibility and may require legislative attention.

Appreciation is expressed to personnel of these State agencies for their cooperation and assistance during the audit: State Education Department, Department of Social Services, Division for Youth, Department of Correctional Services, Office of Mental Retardation and Developmental Disabilities, Office of Mental Health, Commission of Correction, Department of Health, Division of Alcoholism and Alcohol Abuse and Division of Substance Abuse Services.

A uniform procedure is followed for each of the audits. After the preliminary draft is completed, copies are delivered to the agency or agencies involved in carrying out the legislative policies under review. Agency responses to this audit are included in Appendix C.

In accordance with Commission policy, this report focuses on factual analysis and evaluation. Recommendations and program proposals are not presented since they are in the realm of policymaking and therefore the prerogative of the Legislature.

The audit was conducted by James Haag, Chairman, John Coleman and Stacy VanDevere. Bernard Geizer served as editor. Word processing and graphic services were provided by Marilyn Kroms. Overall supervision was the responsibility of the Director.

The Commission is interested in hearing from the readers of its audits. Any comments or suggestions should be sent to the Director at the address listed on the inside front cover of this audit.

The law mandates that the Chairmanship of the Legislative Commission on Expenditure Review alternate in successive years between the Chairman, Senate Finance Committee and the Chairman, Assembly Ways and Means Committee. Senator John J. Marchi is Chairman for 1983 and Assemblyman Arthur J. Kremer is Vice Chairman.

November 30, 1983

Sanford E. Russell
Director

GLOSSARY

New York State Agencies

COC - Commission of Correction.

DAAA - Division of Alcoholism and Alcohol Abuse.

DFY - Division for Youth.

DOCS - Department of Correctional Services.

DOH - Department of Health.

DSAS - Division of Substance Abuse Services.

DSS - Department of Social Services.

OMH - Office of Mental Health.

OMRDD - Office of Mental Retardation and Developmental Disabilities.

SED - State Education Department.

State Education Department Units

OECHC - Office for Education of Children with Handicapping Conditions.

DICSS - Division of Interagency Cooperation and Support Services in OECHC.

DPM - Division of Program Monitoring in OECHC.

Other Abbreviations

AOBH - Agency Operated Boarding Home licensed by DSS.

ATC - Alcoholism treatment center operated or licensed by DAAA.

COH - Committee on the Handicapped established by school districts and child care institutions to identify evaluate and recommend placement of children with handicapping conditions pursuant to Education Law, Section 4402.

ECIA - Federal Education Consolidation and Improvement Act of 1981, Chapter I, provides the basis for financial support of two programs affecting children in State agency care: (1) programs for handicapped in state operated or state supported schools (formerly PL 89-313) and (2) programs for neglected and delinquent children (formerly PL 89 - 750).

ICF - Intermediate Care Facility operated by OMRDD.

IEP - Individualized Education Program, a required educational plan for each child with a handicapping condition.

RTF - Residential Treatment Facility operated by OMH.

Surrogate parent - An individual assigned to stand in or represent parents in COH and due process procedures, when parents or guardian are deceased or cannot be located or when the pupil is a ward of the State.

I INTRODUCTION

In December 1982, over 46,000 school age children were under care or custody of New York State or its political subdivisions. During 1982 an estimated 120,000 children ages five to 21 entered into or passed through this State-local child care system. Children entered care through voluntary or court ordered placement or because of health or educational needs. As shown in Table 1, ten State agencies operated, supported or supervised programs of full-time residential child care or custody. All children placed by the State Education Department (SED), the Office of Mental Retardation and Developmental Disabilities (OMRDD), the Office of Mental Health (OMH), and the Department of Health (DOH) had handicapping conditions, while 38 percent of Division for Youth (DFY) placements and four percent of Department of Correctional Services (DOCS) inmates were handicapped.

The prevalence of handicapping condition was not known for children or youths in custody of local social services districts, some criminal justice agencies or in care of drug and alcohol rehabilitation programs. Research has documented, however, a relatively high

Table 1

Estimated Number of School Aged Children in Residential Care, and Percent with Handicapping Condition by State Agency Fall 1982

Agencies Responsible for Child Care	School Age Children	
	Estimated Number	Percent With Handicapping Condition
Department of Social Services	26,753	N/A
Division for Youth	4,009	38
Commission of Correction (Jails)	4,000	N/A
Department of Correctional Services	3,500	4
Office of Mental Retardation and Developmental Disabilities	3,510	100
State Education Department	2,353	100
Office of Mental Health	1,186	100
Division for Youth (Detention)	550	N/A
Division of Substance Abuse Services	374	N/A
Department of Health*	13	100
Division of Alcoholism and Alcohol Abuse	13	N/A
Total	46,261	N/A

N/A = Data not available.
*Helen Hayes Hospital only; number of children in skilled nursing homes unknown.

Source: LCER staff from Appendix B.

incidence of handicapping conditions, such as learning disability or mental retardation, in delinquent and incarcerated youth compared to the general population in that age range.[1] Emotional and behavioral difficulties were found more frequently in welfare, state school and foster care youngsters than those in the general population.[2] Serious behavior, communication and learning disorders were found to be more prevalent among adopted children or those seeking adoption than among children with natural parents.[3] Further, learning disability was a common characteristic of drug abusers and was a potentially contributing factor to drug abuse.[4]

The extent to which children who are incarcerated, in detention, in drug or alcohol rehabilitation, or in foster care are "at risk" of criminal or anti-social behavior is not known. Yet, it is clear that effective rehabilitative efforts must be premised upon appropriate identification of the special needs of such children, including their educational requirements.

Audit Scope

This program audit describes the State's complex system of educational services to school age children under care or custody of agencies or subdivisions of the State. School age children are those age five to 21 who have not completed high school. "Children under care" are those in full-time residential settings:

--State operated facilities, e.g., developmental centers, intermediate care facilities (ICF), psychiatric centers, residential treatment facilities (RTFs), State School for the Blind, State School for the Deaf;

--State supported facilities, e.g., child care institutions, group homes and residences, "4201 Schools," "853 Schools" (the latter two types of schools are defined and discussed in Chapter II); or

--State supervised facilities, e.g., drug and alcohol treatment centers, jails, detention facilities.

"Full-time residential care" is rendered in an out of home setting on a 24 hour basis. It may be for a few days or may last several months or longer. Placements may be in a State or locally operated or supervised facility or home.

A State agency or local government may acquire custody of a child through court adjudication or by voluntary surrender by a parent or guardian.[5] Examples of children in State custody are DFY placements and youths sentenced to State prison. Children placed in foster care under local social services districts or in city or county juvenile detention facilities and jails are under local government custody.

Specifically, this program audit:

--Inventories the purposes, scope, programs and estimated costs to educate children under care or custody;

--Reviews State agency efforts to monitor the educational progress of school age children in their care or custody;

--Assesses State and local government compliance with compulsory education law requirements and with specific SED educational standards in Parts 116 and 200, Commissioner's Regulations;

--Describes and analyzes the financing mechanisms for education of school age children in care or custody; and

--Examines SED's oversight of these educational programs.

Chapter II explains SED operated or supervised residential education programs for children with handicapping conditions. Chapter III discusses the education programs available to children or youths under care of nine other State agencies:

--Department of Social Services (DSS),

--Division for Youth (DFY),

--Department of Correctional Services (DOCS),

--Office of Mental Retardation and Developmental Disabilities (OMRDD),

--Office of Mental Health (OMH),

--Department of Health (DOH),

--Commission of Correction (COC),

--Division of Alcoholism and Alcohol Abuse (DAAA), and

--Division of Substance Abuse Services (DSAS).

Chapter IV provides an overview of the State's complex system to educate children in care, comparing the extent of State agency involvement in education programs, how such education is financed, the extent to which agency educational programs comply with SED standards, and agency use and reliance on the Committee on the Handicapped (COH) as the key mechanism to identify, appropriately place and evaluate the educational progress of children with handicapping conditions.

Legislative Intent

Since 1976, legislative enactments have reflected the intent that handicapped and nonhandicapped children in full-time residential care or custody of State agencies or local governments be accorded, where possible, the same rights, privileges and opportunities to education as children living at home and attending public school. This is manifested in statutory requirements that children in care or custody:

--Have their educational needs identified and served and, if suspected of having a handicapping condition, be evaluated by a COH, with appropriate COH recommendation for placement;

--Be placed in the least restrictive educational placement, with access to public school or BOCES programs where feasible.

SED was authorized to adopt, maintain and enforce appropriate educational standards to achieve these purposes.

School District, COH and SED Responsibilities

Chapter 853, Laws of 1976 was enacted to rectify the heretofore "unduly complex and administratively burdensome" methods of securing and financing education for children with handicapping conditions.[6] A child with a handicapping condition was defined as a:

> Person under the age of twenty-one who is entitled to attend public schools pursuant to section thirty-two hundred two of this chapter and who, because of mental, physical or emotional reasons can receive appropriate educational opportunities from special services and programs to include, but not limited to, transportation, and the special services and programs delineated in subdivision two of the section.[7]

The statute revised school district and SED responsibilities to identify and appropriately place such children. Provisions included:

--Each school district to establish a COH to find, identify and recommend educational placement for children with handicapping conditions;

--Each school district board of education to assure that appropriate educational services and programs be provided to such children;

--Placement of a child with a handicapping condition in a residential school only if no appropriate nonresidential school is available;

--Transfer to SED from the Family Court of certain responsibilities to determine educational needs of such children;

--SED to periodically inspect, report upon and make recommendations concerning instructional programs for children with handicapping conditions who reside in or attend State operated or State financed social services, youth, health, mental health or correctional facilities;

--SED commissioner, in consultation with appropriate State agencies, to determine tuition rates and reimbursement methodologies for private schools for children with handicapping conditions.

This broad realignment of SED and school district duties: (1) clarified school district responsibility to find, identify and appropriately place children with handicapping conditions, and (2) made SED responsible for oversight of school district and State agency programs to educate such children.

School district COH procedure extends to child care institutions (serving 13 or more children) licensed by DSS or OMH.[8] Each child care institution having a school was required to appoint a COH, with similar composition and duties to that of a regular school district COH. If, prior to Family Court, social services, or mental health agency placement of a child in a child care institution, the child was suspected of having a handicapping condition, the school district of residence was to be requested to provide a COH evaluation of the child. These COH recommendations were to be "advisory" to the placing agency, although they might be the basis for a parent, guardian or surrogate parent appeal of the placement decision. The child care institution's COH also was required to report annually the child's progress to the local social services district commissioner or DFY, who are then required to provide that information to the child's parents or guardian and the school district COH.

Least Restrictive Environment

Several statutes apply the "least restrictive environment" to all children in custody or care of State agencies. Chapter 47, Laws of 1977 and Chapter 66, Laws of 1978 dealt with children who were patients at OMRDD developmental centers or OMH psychiatric centers. Such children were to receive the same education as they would "otherwise be entitled to receive in their local school district" and tuition cost reimbursement procedures were provided for children attending school district programs.[9]

Chapter 721, Laws of 1979 established procedures for educational services in OMRDD intermediate care facilities (ICFs) for retarded and developmentally disabled children. It authorized school age children in ICFs to be admitted to public schools and provided State tuition reimbursement for school district services rendered.

Chapter 563, Laws of 1980, the Institutional Schools Act, mandated that children placed in child care institutions licensed by DSS or OMH be entitled to a "free and appropriate education in the least restrictive environment."[10] While the foregoing enactments affected only children with handicapping conditions, this statute extended the least restrictive environment to all children, whether handicapped or not, if such children resided in a child care institution.

Chapter 885, Laws of 1981, made school district education programs available to children placed in hospitals or other institutions for the "care, custody and treatment of children."[11] This law required that the school district in which the child lived provide educational services to the child, directly or by contract with another school district. Hence, the Legislature intended that school age children in hospitals, nursing homes, jails, detention centers, alcohol and drug treatment centers, and other institutional settings be provided with appropriate continuous educational services, and that school districts of residence arrange and pay for those services.*

Chapter 885 also specified that children in DFY custody may attend public schools at the expense of the school district of residence.[12]

SED Standards

Education Law, Section 112 gives SED a broad mandate to:

> Establish and enforce standards of instruction, personnel qualifications and other requirements for educational services or programs. . . with respect to the individual requirements of children who are in full-time residential care in facilities or homes operated or supervised by any state department or agency or political subdivision.[13]

SED is to "cooperate with the division for youth, the department of mental hygiene and the department of social services with respect to educational and vocational training programs for children placed with, committed to, or under the supervision of such agencies."[14]

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*Subsequent to program audit draft review, SED officials informed LCER staff that Chapter 885 should not apply to children in detention centers. Specifically, SED's position is that the provisions of Education Law, Section 3202 (7) do not extend to youth in local detention facilities.

Section 112 standard setting and enforcement authority is consistent with the inspection, reporting and recommendation authorization under Chapter 853, Laws of 1976 (article 89) discussed previously.

SED promulgated Part 116, Commissioner's Regulations which requires that agency educational programs be "equivalent and comparable" to those of school districts. Specific educational standards cover:

1. Length of school day;
2. Required days of instruction;
3. Components of instructional program;
4. Physical education, health services, health and safety education requirements;
5. Pupil attendance and academic records;
6. Diplomas and certificates;
7. Occupational education, if provided;
8. Certified instructional personnel;
9. Facility long range and annual education plans.

In addition, Part 116 specifies that each agency facility or home be subject to SED's requirements for children with handicapping conditions, namely:

--Establish a facility committee to carry out the duties and functions of the COH;

--Comply with class size, resource room and individualized education plan requirements;

--Annually report the progress of each child to his local school district COH and parents;

--Appoint a surrogate parent when a child is without natural parents or a guardian or is a ward of the State;

--Meet other provisions of Part 200, Commissioner's Regulations as appropriate.

Education Law, Section 112 applies these standards to school age children (ages five to 21) in full-time residential care of a State agency or a local political subdivision of the State. Exceptions are: (1) children over the compulsory school age of 16 who have at least a fifth grade reading and writing competency and who have opted to quit school; and (2) children who have graduated from high school.[15]

Part 116, Commissioner's Regulations further restricts the application of these standards by expressly stating that they apply only to such children who do not attend the

public schools in which such homes or facilities are located. Thus, the importance of Part 116 is that it establishes a dual standard for State monitoring of the educational progress or performance of children in full-time residential care. If the child attends a State operated school or an approved private school, his or her educational progress is monitored by SED according to established procedures. If the child attends public school, however, SED does not review his or her educational progress or attainment. Instead the child's educational performance is viewed as a responsibility of the school district. And, in theory, the child in full-time residential care is treated in the same way as any other child.

Committee on the Handicapped (COH) Role

The COH is the administrative unit charged to find, identify and recommend appropriate placement of children having or thought to have handicapping conditions. After school board, SED or agency placement of the child, the COH is to review the child's individualized educational program (IEP), to periodically evaluate his progress towards educational goals, and to annually reevaluate the appropriateness of the child's educational placement. The role of the COH is particularly important for children in State or local government care or custody, because these youngsters have a relatively high incidence of handicapping conditions and often do not have parental help or advocacy.

LCER's April 1980 program audit, School District Committees on the Handicapped, assessed the performance of school district COH's on a statewide basis. The reader is referred to that report for detailed coverage of school district COH operations. This program audit, however, deals with many children who may be evaluated and placed by State agencies and not necessarily by school districts; thus, the performance of the COH operation by State agencies is of interest.

Exhibit I contrasts the legal authorization, composition, duties, school programs monitored and reporting requirements for school district and State agency COHs. School districts' COHs are governed by Part 200, Commissioner's Regulations, while State agency facility committees operate under Part 116, Commissioner's Regulations. A parent of a child with a handicapping condition is a required member of a school district COH but not of a facility committee. While the respective duties are worded somewhat differently, the duties and responsibilities of the COHs and the facility committees are essentially the same.

The school district COH monitors educational progress of children placed in 853 schools (approved private schools for children with handicapping conditions), and the evaluations performed by those schools are referred to the COH of the district. Generally, the 853 schools also are child care institutions and must have their own COHs. Child care institution COHs are responsible for monitoring the educational progress of children in their care and for referring the results to the school district of residence. Similarly, State agency facility committees must report educational progress of children back to the child's school district COH. The multidisciplinary team in each 4201 school functions as that school's COH and serves as the COH for all students enrolled at the school.

Chapter IV will discuss the performance of State agency facility committees in terms of these standards as of March 1983.

Exhibit 1

Comparison of School District and,
Child Care Institution COH and
State Agency Committee Functions

	Function	
	School District or Child Care Institution COH	Facility Committee
Statutory Authorization	School District-Education Law §4402; Child Care Institution, Education Law §4005	Education Law §112
Commissioner's Regulation	Part 200	Part 116
Who Appoints	Board of education	Chief administrator of the facility
Membership	--School psychologist --Teachers or administrators --School physician --A parent of a handicapped child --Other persons appointed by board	To include appropriate professional staff of such facility. Parent members not required.
Duties	To "identify review and evaluate at least annually the status of each handicapped child and each child thought to be handicapped. . . ."	"Evaluating the needs and recommending an appropriate educational program for each pupil determined by the committee to be a handicapped child. . . ." Duties same as Part 200.5, Commissioner's Regulations.
Review Responsibility	School district COH reviews 853 School placements Child care institution COH reviews Article 81 placements	Schools operated or supported by State agency.
Progress Reports	School district COHs report to parent Child care institution COH reports to COH of school district of residence	COH of school district of residence.

Source: LCER staff.

Chapter Summary

● Over 46,000 school age children were under the full-time residential care or custody of ten State agencies and/or local governments as of December 1982. During 1982 some 120,000 children came into or passed through the State's child care system. Almost all of the children were in residential care and most had handicapping conditions.

● State law requires that children in full-time residential care or custody have the same rights, privileges and opportunities to education as children living at home and attending public schools. Specifically, the Legislature intended that such children have their educational needs identified, be appropriately placed in the least restrictive environment feasible, and, if they have handicapping conditions, be monitored by a COH or a facility committee.

● SED has broad responsibility for overseeing the adequacy of educational programs for children under care or custody of State agencies. However, a dual standard exists, with SED monitoring the educational progress of children placed in State operated or State approved private schools. SED does not monitor the educational progress of children under care or custody of State agencies who are attending public schools.

● SED is required to establish and enforce standards for agency educational services or programs. Parts 116 and 200, Commissioner's Regulations govern these agency educational programs.

II EDUCATION PROGRAMS SUPERVISED BY THE STATE EDUCATION DEPARTMENT

The State Education Department (SED) is responsible for overseeing the educational services to all children who are residents of the State regardless of where such instruction is received. This chapter examines the educational programs under direct SED supervision. Statistics on the number of children placed represent only SED or school district placements; however, it is noted that social services districts also may place foster care children in these educational settings under Article 81. In either case, the educational programs of children placed in these settings are under SED's direct supervision.

SED is mandated to "use all means and measures necessary to adequately meet the physical and educational needs of handicapped children,"[1] and alternative educational service programs are available to address different handicapping conditions. Children with handicapping conditions may be placed in educational programs under Articles 85, 87, 88 or 89 of the Education Law. Schools receiving children placed pursuant to Article 89 are referred to as "853 Schools" after Chapter 853 of the Laws of 1976 which streamlined the system for providing services to handicapped children. These "853 schools" must be approved by SED to serve handicapped children. Schools receiving handicapped children placed pursuant to Articles 85, 87, and 88 are "4201 Schools" after the corresponding section in the Education Law which identifies such programs. Additionally, children may be placed in a special act school district. These districts were created over the years by special enactments of the Legislature. They have no taxing authority, no voters and are located on the grounds of authorized child care institutions. Special act school districts, though classified as public schools, procedurally are considered "853 schools" for purpose of SED approval to serve handicapped children. In all three settings the educational programs are supervised by SED.

Table 2 shows the number of children with handicapping conditions by type of educational placement, 1978-79 through 1982-83. Over this period, the number of children placed decreased by 1,493 or 12.2 percent. Most of the decrease occurred in the

Table 2

Handicapped Children Receiving Educational Services by Placement 1978-79 to 1982-83

	School Years					Four Year Percent
	1978-79	1979-80	1980-81	1981-82	1982-83	Increase (Decrease)
853 Schools[a]						
In-state	8,823	8,862	9,047	8,585	7,326[d]	(17.0)
Out-of-state	565	484	467	513	594	5.1
Special Act[a]	100	219	313	331	312	212.0
4201 Schools[b]						
State-Operated						
Batavia	123	105	105	104	95	(22.8)
Rome	238	222	210	203	193	(18.9)
State-Supported[c]	2,357	2,243	2,236	2,204	2,193	(7.0)
Total	12,206	12,135	12,378	11,940	10,713	(12.2)

[a] Based on enrollments (placements under Article 89). Excludes Article 81 placements into special act school districts by DSS. These placements are discussed in Chapter III.
[b] Based on head counts (placements under Articles 85, 87, and 88).
[c] Based on head counts (placements under Article 85; includes Human Resources School).
[d] Includes 25 children who attend out-of-state schools, but reside in New York State.

Source: SED, Information Center on Education, March 1983.

number of in-state 853 placements. The number of children placed in special act school districts tripled over the four years.

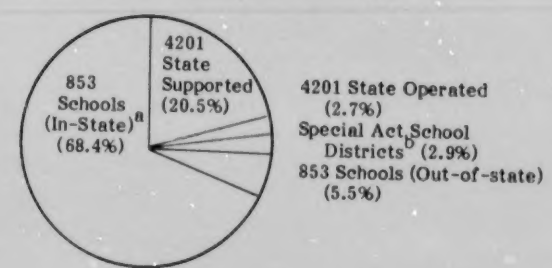
Approximately one-fifth of the 10,713 children were in full-time residential care (i.e., living at the school) during the 1982-83 school year. As shown below, most of the children in out-of-state 853 and State-operated schools were full-time residential students, while less than half of the children in special act, State-supported 4201 and in-state 853 schools were in full-time residential care:

Placement	1982-83 Children in Full-time Residence Under SED Supervision: Number	Percent of All Children Placed
853 Schools		
In-State	1,055	14.4
Out-of-State	579	97.5
Subtotal	1,634	20.6
Special Act	140	44.8
4201 Schools		
State Operated		
Batavia	75	78.9
Rome	140	72.5
State Supported	364	16.6
Subtotal	579	23.3
Total	2,353	22.0

Chart 1 compares the distribution of the total number of children served by 853, 4201 and special act schools with the distribution of children in full-time residence. While out-of-state placements comprise only 5.5 percent of the children served, they make up close to 25 percent of residential placements.

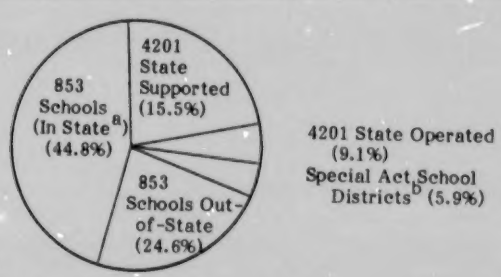
Chart 1

Distribution of Handicapped Children by Educational Setting 1982-83


853 Schools (In-State)[a] (68.4%)
4201 State Supported (20.5%)
4201 State Operated (2.7%)
Special Act School Districts[b] (2.9%)
853 Schools (Out-of-state) (5.5%)

Total 10,713

Distribution of Handicapped Children In Full-Time Residential Care 1982-83


853 Schools (In State[a]) (44.8%)
4201 State Supported (15.5%)
853 Schools Out-of-State (24.6%)
4201 State Operated (9.1%)
Special Act School Districts[b] (5.9%)

Total 2,353

[a] Excludes 853 Family Court placements.
[b] Excludes placements by DFY and DSS.

Source: SED Information Center on Education, March 1983

Table 3 shows the handicapping conditions for children placed. Children exhibiting any handicapping conditions may be found in 853 schools, while 4201 and special act schools serve children classified as emotionally disturbed, deaf, blind, physically handicapped or multiply handicapped. For a more detailed breakdown of these children's placements by type of handicapping condition, see Table B-1 in Appendix B.

Table 3

Children Placed in 853 Schools,
4201 Schools and Special Act School
Districts by Handicapping Condition
1982-83

Handicapping Condition	Number	Percent
Emotionally Disturbed	3,502	32.7
Deaf	1,927	18.0
Trainable Mentally Retarded	1,590	14.8
Multiply Handicapped	1,540	14.4
Learning Disabled	601	5.6
Educable Mentally Retarded	535	5.0
Blind	362	3.4
Orthopedically Handicapped	304	2.8
Physically Handicapped	160	1.5
Autistic	111	1.0
Other*	81	0.8
Total	10,713	100.0%

*Includes Speech Impaired, Hard of Hearing, Other Health Impaired and Unknown.

Source: SED, Information Center on Education, March 1983.

Educational Program Standards

All 853 schools, special act school districts and 4201 schools must have SED approval before serving children with handicapping conditions. The approval may be conditional (limited to one school year) or final. Final approval requires a minimum of two site visits by SED staff during the year of conditional approval.

In several areas, the educational standards applicable to 853 schools, special act school districts and 4201 schools are identical to those applicable to educational programs in the traditional public school system. These include:

--Professional and supervisory personnel certification,

--Length of school day,

--Physical education requirements,

--Diploma and certificate guidelines,

--Health and safety education,

--Occupational education, and

--Attendance requirements.

SED has promulgated specific educational standards addressing the needs of the handicapped student. Found in Part 200 of the Commissioner's Regulations, these standards, among other things, provide for minimum hours of instruction in special classes for specific handicapping conditions. In addition, children may attend resource room programs to supplement regular or special classroom instruction.

Education Program Monitoring

The responsibility for periodically inspecting and reporting on the 853 schools, special act school districts and 4201 schools rests with SED's Division of Interagency Cooperation and Support Services (DICSS) and with the Division of Program Monitoring (DPM).

DICSS reviews 4201 schools, special act school districts and 853 residential schools, while DPM reviews programs for children with handicapping conditions provided by public, BOCES and 853 nonresidential schools. Each educational program is subject to review once every three years.

While SED obtains annual reports for each of the 4201 schools, neither these reports nor the on-site monitoring reports are assimilated into a comprehensive yearly report. Section 4201 of the Education Law requires SED to submit an annual report on the 4201 schools to the Legislature; however, SED has not complied with this mandate. No corresponding annual report requirement applies to the 853 schools or the special act school districts.

Fiscal oversight is handled through DICSS's Public and Private School Unit for 853 schools (residential and nonresidential) and through SED's Bureau of Fiscal Management along with DICSS for 4201 schools.

Fiscal oversight for 4201 schools to a large extent is handled through the review of budget requests submitted in compliance with Part 200.10. Pursuant to this regulation, reviews of budgets submitted by the State-supported 4201 schools are to be guided by the expenditures at the two State-operated schools. In addition, the Office of the State Comptroller conducts on-site fiscal audits of 4201 schools to examine expenditures of State aid.

For 853 schools and special act school districts, fiscal review is handled indirectly when DICSS annually approves each school's tuition rate. The rate is based upon a methodology approved by the Division of the Budget. In addition, like 4201 schools, 853 schools and special act districts are subject to on-site fiscal reviews by the Office of the State Comptroller.

Audit and Control Review

The Office of the State Comptroller recently completed a review of SED's program and fiscal oversight controls for the 4201 schools. Programmatic control issues included:

--A need for improved on-site review procedures, including implementation of sampling techniques to ensure that sampling methods result in proper representation of items to be reviewed;

--A revised procedure for reviewing the certification of special education teachers;

--Expansion of SED's review guide to include important issues (i.e., educational program space, staffing levels above the minimum requirements of Part 200, and academic achievement);

--A need for improved report documentation and follow-up procedures; and

--Adoption of a standard methodology for resolving compliance issues disclosed in site visit reports.[2]

Specific findings related to SED's fiscal oversight included the need for:

--Written budgetary guidelines,

--Procedures for the non-personnel service portion of the 4201 State-supported school budgets (required to be based upon the non-personnel services portions of the State-operated schools),

--Budgetary cost guidelines, and

--Uniform methodology for allocating indirect costs.

853 Schools and Special Act School Districts

As mentioned earlier, Chapter 853, Laws of 1976 amended Article 89 of the Education Law, and established new requirements for placing pupils with handicapping conditions in public and private schools. In addition to transferring responsibility for the determination of the educational needs of a large number of children from the Family Court to the Commissioner of Education, the act provided that:

--Each school district set up a COH to identify children with handicapping conditions, and

--School districts be authorized to contract for educational services with other school districts, BOCES, private nonresidential schools and residential schools approved by the Commissioner.

Since 1980 public school districts have been able to place a child in a special act school district.[3] The eligibility criteria, placement procedures, funding considerations and SED monitoring regulations for special act school districts mirror those of 853 schools.

Eligibility

Eligibility guidelines for private school placements (in-state and out-of-state) require that a person be entitled to attend a public school within New York State* and be defined as a "pupil with a handicapping condition."

The term "handicapping condition" refers to a mental, physical or emotional problem which can be addressed through appropriate education special services and programs approved by the State Education Department.

The Commissioner's Regulations, Part 200.1, details specific classifications within the term "handicapping condition."

Placement Alternatives

When special services and programs are unavailable or inappropriate for a child's handicapping condition(s), school districts have the option to place a child into a SED-approved private school. Upon receipt of the recommendation from the district's COH, the district may enter into contractual obligations with an 853 school; however, such contracts are subject to the Commissioner's annual approval.

If the district determines that no appropriate private school placement is available and that an out-of-state placement is needed, the local district may request the Commissioner to approve an out-of-state placement. This application must include written statements from five in-state private schools indicating that an appropriate in-state program was not available. Only the Commissioner may contract for out-of-state educational services.

Funding Considerations

The financial responsibility for special educational services provided to children placed pursuant to Article 89 is with the State Education Department, the local social services district and the child's school district. For 853 and special act school district placements, the Education Law provides that:

--Maintenance (if applicable) be a charge upon the local social services district wherein such child resides at the commencement of the school year for which aid is to be paid.

--Transportation be provided by the local education agency and reimbursed in accordance with general transportation criteria found in Article 73 of the Education Law.

Tuition expenses, however, are handled differently depending upon the type of placement. For in-state 853 and special act school district placements, tuition expenses are paid by the placing school district which is subsequently reimbursed by the State

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*To be entitled to attend a public school, a person must be between the ages of five and 21 and not have received a high school diploma. In addition, a veteran of any age who was not dishonorably discharged is eligible for placement.

excess cost formula. For out-of-state 853 placements (and in-state placements made prior to July 1, 1977) SED pays the full tuition expenses. The placing school district is required only to reimburse the State in an amount equal to the district's "basic contribution"--an amount equal to the total school district local property tax and nonproperty tax levy per pupil unit.

A comparison of tuition maintenance and pupil transportation financing is presented and discussed in Exhibit II, Chapter IV.

4201 Schools

The 13 "4201 Schools" provide special education programs for children who are blind, deaf and severely physically handicapped beginning at age three,* except for the State Schools for the Blind and Deaf, which accept children from age five. The State currently owns and operates two schools (the NYS School for the Blind and the NYS School for the Deaf). An additional ten State-supported schools serve blind and/or deaf children; although privately owned, they receive most of their funding from the State. Finally, the Human Resources School in Albertson, Long Island, serves severely physically handicapped children.

Eligibility

Eligibility requirements applicable to 4201 school placements are found in Section 4203 of the Education Law for deaf children and children placed into the Human Resources School, and in Section 4206 of the Education Law for blind children. Specific eligibility requirements are defined in Commissioner's Regulations, Part 200.7. The Commissioner's approval is required for State appointment:

> Deaf or blind children will be appointed to the school for the deaf or blind nearest their place of residence on a day basis. Residential school-week appointments, if available, will be considered only when travel arrangements preclude attendance on a day basis. Exceptions due to student educational needs may be necessary, and will be considered when a child's parent presents adequate justification for such placement. Appointments for severely physically handicapped children to attend the Human Resources School shall be on a day basis only.[5]

Residency requirements may be waived by the Commissioner. Further, whenever more persons apply for admission than can be accommodated by the two State-operated schools, the applicants received by these two schools are apportioned so that each county is represented in the ratio of its blind (deaf) population to the total blind (deaf) population of the State.

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*Deaf infants (children under the age of three with an identified severe hearing loss) also are also eligible for appointment to SED approved schools.

Placement Alternatives

While placement decisions into 4201 schools ultimately rest with the Commissioner--the specific 4201 school, the child's parents and the school district of residence all play important roles.

Initial recognition of a child's need for placement may result from COH evaluation and recommendation. If the COH's evaluation of the child's needs is that the child could not benefit from the educational programs offered within the district, the COH recommends an alternative placement. If the alternative placement recommendation indicates that a 4201 school may be appropriate, it is the parents' responsibility to apply to the Commissioner of Education for their child's appointment to a State-operated or State-supported school. Upon receipt of the application, SED's Office of Education of Children with Handicapping Conditions (OECHC), acting on behalf of the Commissioner, directs the parents to a designated 4201 school for intake evaluation and eligibility determination, the results of which are forwarded to the child's parents and to OECHC. OECHC then either approves or rejects the school's recommendation. If the child is found to be eligible and OECHC approves the recommendation, arrangements are made to place the child. If the school's recommendation is for nonacceptance and the child's parents disagree, due process procedures are available. When OECHC rejects a 4201 placement, the responsibility for an alternative placement subsequently returns to the school district's COH and the board of education.

Funding Consideration

All tuition and maintenance costs for programs and services for State-appointed school age pupils in 4201 schools are paid by SED. Funds equal to the child's home school district's "basic contribution"--an amount equal to the total school district local property tax and nonproperty tax levy per pupil unit--are deducted automatically from the State aid to that school district by the State Comptroller.

For nonresidential placements, transportation is provided by the child's home school district, and State pupil transportation aid is apportioned in accordance with general reimbursement criteria under Article 73 of the Education Law. The legal responsibilities for transportation costs for children placed in residential schools vary. For State-supported schools and the New York State School for the Deaf, such costs are handled in the same method as for nonresidential placements; that is, they become the responsibility of the local school district (subject to State reimbursement). For children attending the New York State School for the Blind, Section 4311 of the Education Law provides that such costs are the responsibility of the child's parent(s) or legal guardian. In the event that such expenses are not paid by the child's parent(s) or legal guardian, such costs are paid by SED. While such statutory provisions exist, SED officials indicate that transportation expenses for children attending the NYS School for the Blind are handled in the same way as for other 4201 schools and the New York State School for the Deaf. That is, these costs are paid by the local school district (subject to State reimbursements).

Deaf Infant Program

Deaf children under age three are eligible for educational programs pursuant to Section 4204-a of the Education Law. Such placements, however, are on a day basis only. Placement procedures are similar to those followed for 4201 schools, with appointments

made by the Commissioner. As of February 1983, 150 infants were in deaf infant programs. During October 1982, 22 approved programs operated in 17 counties in the State.

Once the child has been appointed to the program, quarterly reports which assess the infant's progress in the program are submitted to SED. SED's DICSS also reviews and monitors these programs through site visits. All tuition costs for educational services provided through the deaf infant program are paid by SED.

Family Court Ordered Placements

School district COHs are not mandated to identify handicapped children until they are five years old, because school districts are not required to provide educational services to children below age five. School districts also are not required to provide summer school instruction for a handicapped child of any age.

For educational services for children who are below age five or who would benefit from summer school instruction, parents must petition the Family Court. Pursuant to Section 236 of the Family Court Act, the Family Court may order a county or the City of New York to pay for the costs of tuition, maintenance and transportation associated with such education. If SED approves the Family Court order, the State reimburses the county or the City of New York for 50 percent of its costs.

Educational Program Costs

State educational program costs for 853 schools, special act school districts and 4201 schools are presented in Table 4. The most significant cost figure is with Family Court ordered placements. While Chapter 853 of the Laws of 1976 sought to reduce the participation of the Family Court in making educational determinations, this goal has not been met, if measured in terms of State expenditures for Family Court ordered placement.

Table 4

State Expenditures for Educational Programs
Supervised by the SED
(In Millions)

	1978-79	1979-80	1980-81	1981-82	1982-83
853 Schools	$ 2.6	$ 7.7	$23.5	$27.6	$ 32.2
Special Act School Districts[a]	3.5	3.6	3.8	--	--
Family Court Ordered Placement	6.2	7.6	24.9	33.2	46.9
4201 Schools					
State Operated	3.5	3.8	4.2	5.1	6.6
State Supported[b]	21.8	23.0	28.3	32.0	34.7
Total	$37.6	$45.7	$84.7	$97.9	$120.4

[a] Direct aid to special act school districts terminated with the 1980-81 school year. Thereafter, state expenditures for special act school districts are in the form of private excess cost aid.

[b] Includes deaf infant program.

Source: SED, Office of Education of Children with Handicapping Conditions.

Chapter Summary

● Of 10,713 children in educational programs under the direct supervision of SED, during the 1982-83 school year, 2,353 (22 percent) were in full-time residential care.

● The State Education Department has direct oversight and program approval responsibilities for 4201 schools, 853 schools, special act school districts and deaf infant programs. To ascertain compliance with Commissioner's Regulations Part 200 standards, the department reviews these programs on a three year cycle.

● Placements into 4201 schools, deaf infant programs and out-of-state placements are made by the Commissioner, while placements into 853 school programs (in-state) and special act school districts are made by local school districts.

● During 1982-83 approximately one-third of the children served by educational programs under SED supervision were classified as emotionally disturbed.

● An annual report of the 4201 schools has not been compiled and forwarded to the Legislature as required by Section 4201 of the Education Law. No annual report is required for 853 schools and special act school districts.

III STATE AGENCY EDUCATION PROGRAMS

At any given time about 43,900 children are in full-time residential care or custody of State agencies or its political subdivisions, excluding children in SED supervised placements, as discussed in Chapter II. During the course of the year, however, an additional 73,500 children flow through these State and local residential programs.

Educational programs available to children in full-time residential care of nine State agencies and county and city local governments are reviewed in this chapter. The following table shows the 1982 census and the number of children served by these residential programs.

School Aged
Children Placed in Full-time
Residential Care or Custody
1982

State or Locally Operated Program	Census[a]	Total Served (during year)
DSS	26,753	37,827[b]
DFY	4,009	6,678[b]
DOCS	3,500	4,331
OMRDD	3,510	N/A
OMH	1,186	2,340[b]
Local Jail	4,000	54,000
Local Detention	550	12,000
DSAS	374	N/A
DOH	13	83
DAAA	13	135
Total	43,908	117,394

[a]Census dates may differ.
[b]Includes some children who came into care more than once during year.

Each State or local program is discussed in terms of: how children come into care, characteristics of the children served, types of residential placements made, available educational programs, and agency efforts to monitor educational status and progress of children. Since all State and local agency educational programs fall under SED's review and oversight, compliance to SED's educational standards also is assessed.

Children in Social Services Foster Care

The State Department of Social Services (DSS) administers, supervises and finances public welfare services in the State.[1] One such service is out-of-home residential care for children placed in the custody of the local commissioner of social services--i.e., children in foster care. In December 1982, 26,753 school age children were in foster care, making this the largest component of children in State agency care or custody.

"Authorized agencies" may place a child who is no longer able to remain in the home.[2] An eligible child must be under 18 years old, or, if attending school or college, under 21 years old. Authorized agencies include the State's 58 local social services districts (SSDs) and 137 voluntary child care agencies licensed by DSS.

The local SSDs provide varying degrees of care for foster care children. New York City and three upstate counties (St. Lawrence, Niagara and Washington) provide direct group care and are responsible for all aspects of case management, planning and care. They operate direct residential care programs and license family boarding homes. All SSDs provide indirect care through purchase of services agreements with voluntary child care agencies. The SSD thus retains case management and transfer responsibility while planning and care are furnished by the voluntary child care agencies.

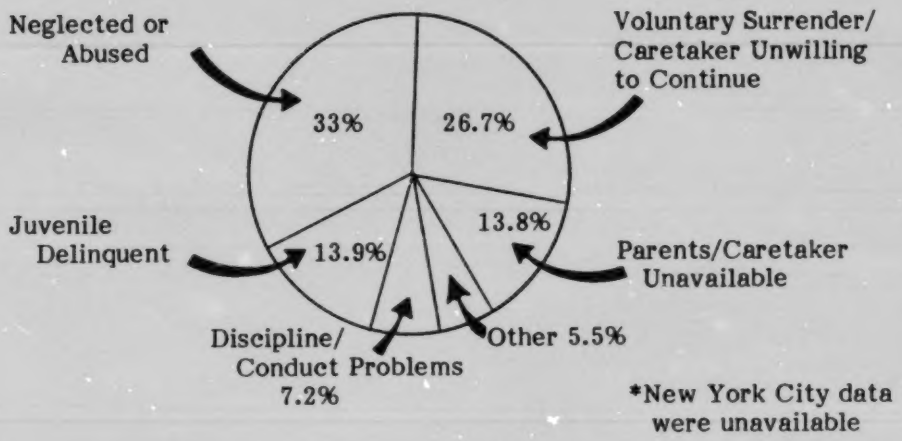
In either direct or indirect care, the local SSD retains responsibility for case review and monitoring, including the child's educational progress, and paying for and securing quality services. Statute requires, however, that most children in foster care for 18 continuous months have their case reviewed by Family Court.[3]

How Children Come into Care

A child may be placed in foster care by: Family Court order or parental surrender of custody. Family Court may place an adjudicated juvenile delinquent (JD); an adjudicated person in need of supervision (PINS); or an abused, abandoned or neglected child in the custody of the local social services commissioner or an authorized agency.[4] The local social services commissioner also may accept custody of a child voluntarily surrendered by a parent(s).[5] This child then may be placed by the local SSD in foster care. Chart 2 shows that one-third of the children in foster care outside New York City were neglected or abused while nearly 27 percent were voluntarily placed.

Chart 2

Reason for Placement of
Foster Children in Care, Upstate*
December 31, 1982



*New York City data were unavailable

Source: LCER staff from DSS, March 15, 1983

Population Characteristics

Between 1978 and 1982 the number of children in foster care decreased by 23 percent:

Foster Care Children
(Age 0-21)

	As of December 31		Decrease	
	1978	1982	Number	Percent
New York City	26,972	20,849	6,123	22.7
Upstate	16,779	12,975	3,804	22.7
Total	43,751	33,824	9,927	22.7

About two-thirds of the children in foster care were in New York City. Table B-2, Appendix B, compares New York City and Upstate foster care populations, 1978 through 1982. The decline may be attributed partially to the Child Welfare Reform Act which encourages return of children to family or community settings where possible. The decrease also reflects a general tapering off in the number of children, due to the low birth rates in recent years.

It is not known how many foster care children have handicapping conditions. Neither DSS nor SED records this information, although SED does maintain data on the handicapping conditions of children placed in special act schools. Moreover, neither agency accumulates information on school attendance, drop out rates, or graduation rates for children in foster care. As discussed in Chapter I, research suggests that adoptive, neglected, and foster children have a higher incidence of serious behavior, communication and/or learning disorders than children living in traditional family situations.

In 1982, over 80 percent of the children in foster care were in community settings:

Type of Setting	Bed Capacity	1982 Number of Children	1982 Percent of Total
Community:			
Family care	1-6	24,024	71.0
Group home	7-12	2,772	8.2
Agency operated boarding home	1-6	541	1.6
Subtotal		27,337	80.8
Institution:			
Child care institution	13+	5,550	16.4
Group residence	13-25	758	2.2
Subtotal		6,308	18.6
Other/unknown	N/A	179	0.5
Total		33,824	99.9

Table B-3 presents the number of children in foster care by type of placement, New York City and Upstate, for 1978 through 1982. During the four years total foster care placements declined, while increases occurred in the number of group residence and agency operated boarding home (AOBH) placements statewide and in the number of group home placements Upstate. Foster home placements dropped 23 percent while institutional placements declined 33 percent.

Educational Program

When the SSD places a child in the community, the school aged foster child usually attends public school or a BOCES program. The school district in which the foster home, group home, or AOBH is located is responsible for the child's educational program and for making suitable educational placement.[6] If the child has a handicapping condition, the school district must place the child in an appropriate special program. The placing school district is responsible for financial arrangements and for billing "additional operating" costs to the school district of residence.[7]

If placed in the more restrictive "child care institution" setting (13 or more beds), the child's educational placement is governed by Article 81 of the Education Law. This statute mandates that each child placed in a child care institution "be entitled to receive a free and appropriate education in the least restrictive environment."

Table B-11, Appendix B, shows an estimated $36 million tuition expenditure by DSS and local SSDs to educate children placed in child care institutions during 1982-83. The additional costs to school districts for the majority of children in foster care were not known.

Each child care institution operating a school also is required to maintain a COH to evaluate and recommend educational placements for children with handicapping conditions. In addition, the COH of the school district of residence may be requested to furnish an educational evaluation to the COH of the child care institution; however, the child care institution makes the placement decision and the SSD pays the tuition.[8]

Educational placements for children in child care institutions as of June 30, 1981 are shown below. Excluded are children placed in child care institutions operated by New York City and St. Lawrence, Niagara and Washington counties' SSDs which provide direct foster care services.

Educational Placement of Children
in Child Care Institutions
June 30, 1981

Type of Educational Placement	Type of Child Care Institution		
	Institution	Group Residence	Total
On Campus School	3,785	56	3,841
Public School	583	155	738
Other School (BOCES, 853, Special Act)	154	92	246
Another Agency School	49	1	50
Total	4,571	304	4,875

As illustrated, 86 percent of the children in child care institutions attended on campus, special act, private, 853 or BOCES school programs. One half of the children in group residences attended public school programs.

Child care institutions may provide educational services in one of four ways:

--On Campus School - Thirty voluntary child care agencies operated schools on the institution's grounds. SED approved 27 of the 30 to furnish educational services for children with handicapping conditions. The approved schools furnish such educational services through contracts with public school districts pursuant to Section 4402 of the Education Law. Nonapproved schools also are monitored by SED.

--Special Act School District - Statute established 19 union free school districts which have no voters nor taxable wealth. They are public schools with organized curricula, teacher bargaining units and with administrative structures modeled after community public schools. Located on the grounds of child care institutions, only 16 operated in 1982. Eleven of the 16 were in the New York City catchment area. All 16 were SED approved to educate children with handicapping conditions.

--Board of Education Affiliated School - Twenty-two voluntary child care agencies have agreements with school districts to provide educational services for children in care on the institution grounds. Twenty of the 22 affiliated agencies were in New York City, and the Board of Education furnished the required regular and special education services.

--Off-grounds School - Twenty-five voluntary child care agencies did not provide educational services. Children in care were placed in appropriate public or private school day programs by the school district in which the institution is located.

In summary, 46 child care institutions operated educational programs on the grounds of the institution and 43 were SED approved to educate children with handicapping conditions. Twenty-two others were affiliated with school districts which provided instruction on institutional grounds, while 25 did not provide educational services.

Other than the special act statutory authorization, little practical difference existed between the on campus school and the special act school district. Both served a similiar clientele and had their education programs reviewed and monitored by SED.

Educational Program Management

DSS does not review or monitor the educational progress of foster care children. This function was viewed as the responsibility of the local SSD to be carried out through social worker case management and utilization review. According to DSS:

> The standards for Uniform Case Recording (UCR) require that an assessment of each child's educational or vocational functioning be included in the overall case assessment that must be completed within 30 days of application for services. If problems are noted and a need for services is identified, the need must be described in the UCR assessment. The caseworker is required to establish an initial services plan by Day 30 and a

comprehensive service plan by Day 90 which contains a list of service goals and objectives in the identified areas of need, including educational/vocational. The service plan is reviewed and updated every 6 months thereafter, under the UCR requirements.

Section 153-d of Social Services Law provides a mechanism for this Department to monitor a local district or agency's compliance with UCR forms completion requirements and other case planning mandates. The Department has conducted manual audits of case records under this section of statute and has imposed sanctions in instances of non-compliance. In the future these audits will be done using CCRS (Child Care Review System).

The Utilization Review standards (UR) establish substantive casework standards. UR sets standards for appropriateness of placement, requiring that each child be placed in a setting that allows him or her to maintain ties to his or her previous school, neighborhood, peers and family, unless there are reasons why that is not practicable or in the child's best interests. The level of placement should be the least restrictive setting in which the child can receive the services he or she needs. UR requires consistency among the service needs identified and the goals and services which are provided. This means that if specific educational needs are identified, the child should be receiving services to address those needs. To date, the Department has conducted an audit statewide, based on these substantive standards. Further UR audits will be conducted on a periodic basis.[9]

Due to the descriptive focus and broad scope of this LCER study, the extent to which UCR, CCRS, and UR were meeting these standards was not examined.

While DSS reviews the necessity and appropriateness of care (utilization review) and the effectiveness of case management (Child Care Review System - CCRS), neither review ascertains the educational performance and the degree of educational progress made by the foster care child. DSS views this as the function of SED.

Conformance to SED Standards

SED's Division of Interagency Cooperation and Support Services (DICSS) reviews the educational programs for foster care children placed in child care institutions which operate schools. Included are the 30 voluntary child care agencies with on campus schools and the 16 special act school districts. DICSS does not monitor the education programs for children placed in child care institutions affiliated with boards of education or those which use school district programs. The department believes that under Part 116 Commissioner's Regulations this review is a local school district function. Thus, DICSS educational program review and monitoring applies to less than half of the 93 child care institutions.

As illustrated on Exhibit IV, in Chapter IV, special act school districts were in almost full compliance with SED's Part 116 standards. The child care agency campus schools generally were not in compliance with Part 116 requirements for COH operation and procedure.

If a foster care child with a handicapping condition attends a public school or BOCES, that child's education program falls under the Part 200 requirements, monitored by SED's Division of Program Monitoring (DPM). This SED unit is organized on a geographic basis, with "Regional Associates" responsible for monitoring the conformance of all public and private schools to Part 200 standards. Since these monitoring efforts oversee educational programs for all handicapped children, they do not focus on the subpopulation of handicapped children who are in foster care. As mentioned earlier, neither SED nor DSS record data on the incidence of handicapping conditions among foster care children.

If a foster care child is enrolled in a regular school program (i.e., does not have a handicapping condition), SED does not monitor that child's educational performance. At the State level, "no special attention" is paid to that foster care child. Rather, it is assumed that the school district is providing normal supervision of that child's educational progress. While the exact number of foster care children in regular school programs is not known, it appears that roughly 80 percent of the children in foster care fall in this category. Thus, about 21,600 foster care children in full-time residential care are pursuing educational programs without significant monitoring of their progress by SED.

Children in Division for Youth Custody

The State Division for Youth (DFY) administers residential rehabilitation programs for delinquent and other trouble prone youth (boys and girls, ages seven to 21), placed with the division by State courts. DFY views education as "one of the most important components of the rehabilitative process" and attempts to provide a "diversity of educational experiences to meet the special needs of youth placed in its care."[10] As of December 31, 1982, 4,009 youths were in DFY custody. (See Appendix B, Table B-4.)

Youths may enter DFY custody in several ways. Family Court may place adjudicated juvenile delinquents (JDs), restricted JDs or persons in need of supervision (PINS). Also, the Family Court may place a youth in DFY custody at the request of the youth (voluntary placement).[11] The criminal (adult) courts may sentence youths as juvenile offenders (JOs) to DFY secure confinement; JO terms may extend to State prison through transfer from DFY after age 16.[12] Also the criminal courts may grant youthful offender (YO) status and probation, with the condition that the youth voluntarily accept DFY residence and/or other services.[13] Chart 3 shows the adjudication status of children placed in DFY custody as of December 31, 1982. Almost two-thirds of the youths were JDs.

Population Characteristics

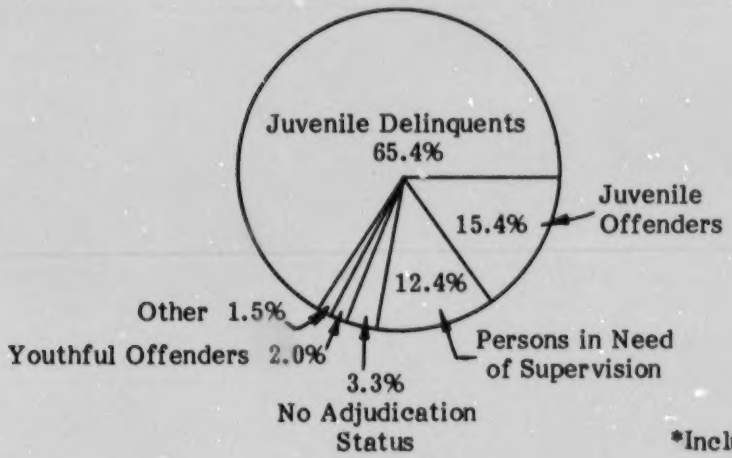
Table B-4 presents five year trends in age, sex, and handicapping condition of DFY's population. As of December 1982, 84 percent of the population was male, while 66 percent was in the 13 to 16 year old age group.

Increasingly over the five year period, DFY identified youths suspected of having handicapping conditions. As of December 1982, 739 or 38.2 percent of the DFY youths placed in security levels I through VI were identified as having handicapping conditions. Of these 739 DFY youths, an estimated 47 percent were emotionally disturbed, 32 percent were specific learning disabled, while 13 percent were mentally retarded.

Chart 3

Children in DFY
Custody by Adjudication Status
December 31, 1982

Total Youths in Custody 4,009



*Includes Restricted JDs.

Source: *LCER staff from DFY Population by Adjudication, December 31, 1982.*

The educational deficiencies of the DFY population also are illustrated by these facts:

Reading Performance

--78% of 13 year olds scored below 8th grade level
- 71% scored two or more years below 8th grade
- 48% scored four or more years below 8th grade.

--87% of 17 year olds scored below 12th grade level
- 83% scored two or more years below 12th grade
- 72% scored four or more years below 12th grade.

Mathematics Performance

--96% of 13 year olds scored below 8th grade level
- 89% scored two or more years below 8th grade
- 59% scored four or more years below 8th grade

--100% of 17 year olds scored below 12th grade level
- 100% scored two or more years below 12th grade
- 78% scored four or more years below 12th grade.[14]

In DFY's words: "A great majority of youths placed. . . lack basic educational skills, are unemployable, unsocialized, impoverished and in many cases struggle with inadequate support systems (family structure)."[15] Studies from other states substantiate the considerable academic underachievement of delinquent and incarcerated youth.[16]

Placement Alternatives

DFY operates 60 geographically dispersed residential facilities ranging from seven bed urban homes to 60 bed rural youth camps, to 160 bed schools and centers. The facilities are classified as secure, noncommunity based or community based, depending upon the security and the access to the community. At the secure and noncommunity based facilities (levels I through IV), physical restrictions and on-site rehabilitative services are emphasized. Community based facilities (levels V and VI) generally rely on available youth services in the locality.

DFY also places youths unable to return to their homes in foster care, alternative homes or independant living settings and aftercare (levels VII, VIII and X). These youths remain under DFY custody and supervision until their release.

Table B-5 summarizes DFY placements by security level, as of December 1978 through 1982. Over the five years, DFY youths increasingly were placed in secure and noncommunity based settings. Of the 4,009 youths in custody on December 31, 1982, 2,527 or 63 percent were in the community, using community resources including public education.

Educational Program

DFY's educational programming starts with intake assessment. Performed by a Youth Service Team, the intake assessment screens health, mental health and educational areas, and the findings of the review may be considered by a court before disposition or sentencing of a youth. DFY's placement decisions, however, were seldom based upon intake assessment findings alone. Rather, the decision generally was based on available bed space, the youth's adjudication status, and court mandated security restrictions.[17]

After placement at a DFY facility, a more specific educational needs assessment is to be undertaken which involves reading, mathematics and language testing and setting of the youth's educational goals. An individual education program is to be developed for each youth.

If a handicapping condition is suspected, the youth is to be referred to a DFY facility COH or regional COH.*[18]

DFY's educational program options include general academic courses, high school equivalency programs, remediation in reading and mathematics, special education and vocational education. LCER's October 1982 program audit, Management of Youth

*DFY operates seven facility COHs and six regional COHs, each with the four statutory members (i.e., school administrator or teacher, school psychologist, school physician, and parent of a handicapped child). Note that DFY's program is distinct from those of other State agencies which use facility committees to perform the COH function.

Rehabilitation Programs, evaluated these program efforts and DFY's effectiveness in managing them. The reader is referred to this LCER program audit for detailed discussion and findings.

The type of education that a DFY youth has access to depended upon the educational resources at the facility. Generally, secure and limited secure/noncommunity based facilities operated their own schools. The larger facilities had a variety of program offerings, but emphasized remediation and vocational training. If placed in a community based facility, such as a foster home or alternative setting, the youth had access to public schools and BOCES programs.

Facility Education. Since education was viewed by DFY as an important component of rehabilitation, most youths in secure, limited secure and noncommunity based facilities attended school. DFY central office retains general information on youth participation in facility educational programs. Child special educational data (e.g., academic, vocational, special education) were maintained at the facility level.

Due to federal requirements, youths participation data were retained for DFY's Education Consolidation and Improvement Act of 1981 (ECIA), Chapter I (Programs for Neglected and Delinquent Children) remedial mathematics and reading programs. During the 1980-81 school year, 1,644 DFY youth participated with these results:

Remedial Program	Instructed and Posttested	Mastering 75% of Objectives	
		Number	Percent
Mathematics	1,422	1,008	71
Reading	1,300	990	76

As shown in Table B-11, DFY educational programs received over $2.2 million in federal funds during 1981-82.

Community Education. The October 1982 LCER program audit reviewed school attendance patterns for youths placed in DFY's community based homes and centers. The audit found that 86 percent of DFY home youths and 89 percent of DFY center youths attended school either full- or part-time. Most home residents attended public school, while most center residents attended alternative or public schools:

Type of School	DFY Residents	
	Home	Center
Public	72%	33%
Alternative	21	40
DFY operated	4	27
Vocational/College	2	--
Total	99%	100%

Educational status and participation information for about 2,500 DFY youths in foster care, alternative placement, independent living, or after care settings also were not collected centrally.

Educational Program Management

DFY's Office of Educational Services is responsible for education program and policy development and for reviewing and monitoring facility education efforts. The office does not monitor the progress of individual youths, because this is viewed as a responsibility of the individual facility. The office, under the direction of the Deputy Director for Program Services, oversees DFY's $6.1 million State and federal funded educational program. (See Table B-11.)

Policy. The office has developed an education policy manual to define objectives, standards and procedures for facility education. Though not promulgated by DFY as of March 1983, some of the procedures were in effect as of that date.

Measurement. DFY implemented norm-referenced pretesting for all youth for initial program placement as well as placement in a federal ECIA Chapter I Program for Neglected and Delinquent Children. However, DFY did not routinely posttest youth on this norm-referenced test to determine their educational progress while in custody. Required criterion-referenced pre and posttests were administered for youths involved in the Chapter I Program, demonstrating significant progress in reading and math skill levels as shown above. DFY officials indicated to LCER staff that standardized norm-referenced posttesting of all youths in custody will be undertaken during 1983-84.

LCER staff requested the measures used to appraise educational performance of youths and to judge the adequacy of facility programs. DFY officials indicated that individual youth educational performance data were not available centrally. DFY could not furnish such summary statistics as:

--Number of youths completing school year,

--Percent of eligible youths promoted to next grade, or

--Number of youths by type of educational program.

DFY did provide LCER with 1981-82 GED test results which reflected a 45 percent degree award rate during that year. In summary, DFY was unable to fully document the performance of its educational program during this LCER review.

Conformance to SED Standards

In 1981 SED reviewed educational programs at 16 of 64 facilities. Widespread noncompliance with Part 116 standards was found, including deficiencies in hours of instruction, teacher certification, curriculum, record keeping, COH procedures and special education programming. Subsequent to the review, DFY and SED negotiated an interagency agreement addressing the noncompliance issues. The agreement, however, included the caveat that DFY program corrections were contingent upon the availability of funds. Due to Division of the Budget objections, the agreement was never concluded. DFY and SED officials indicated to LCER staff that they are cooperating to bring DFY into compliance with Part 116 standards.

Exhibit IV in Chapter IV shows DFY compliance with Part 116 standards as of spring 1983. LCER staff interviews with SED officials indicated that DFY achieved at least general compliance with 13 of the 18 requirements. DFY remained typically out of compliance or in noncompliance with physical, health and safety education; facility administrator to exercise duties of the board of education; and COH reporting requirements.

Youths in Department of Correctional Services (DOCS) Custody

The department is responsible for the secure and humane confinement of individuals sentenced to its custody. Through education and other rehabilitation programs, DOCS attempts to prepare inmates for successful reintegration into the community upon their release. Correction Law requires that each inmate be given a program of education "most likely to further the process of socialization and rehabilitation."[19]

Population Characteristics

As of December 1982, DOCS had custody of 29,100 inmates, housed at 42 State correctional facilities. Persons in State prison generally are convicted felons, sentenced to prison for two or more years. Over two-thirds of the inmates were serving six years to life terms, and almost that many had served prior jail or prison terms. Fifty-two percent of the inmates were Black, while 28 percent were White, and 19 percent were Hispanics. About two-thirds of the inmates were from New York City.

Educational Needs

Data collected at the Downstate Reception Center for inmates classified from October 1981 through March 1982 portray the educational deficiencies of the prison population.[20] Of 2,100 inmates tested:

--71 percent had not graduated from high school;

--52 percent read below the eighth grade level;

--19 percent were illiterate, reading below the fifth grade level;

--4 percent were mentally retarded with IQs under 70.

In December 1982, approximately 3,500 of 29,100 inmates were of school age (ages 16 to 21). Of this total, 3,048 (87 percent) had not graduated from high school and were eligible for educational services until graduation or age 21. DOCS estimates 2,100 of these inmates participated in education programs as of December 1982. About 2,200 of the 3,500 school aged inmates were imprisoned at either Coxsackie or Elmira.

An inmate's educational needs are supposed to be established at intake. During intake, individual background data, required security, and education and health needs are assessed. Inmates found to be mentally retarded, emotionally disturbed, or disabled may be diverted from the general prison population. If space is available, these inmates can be placed in correctional facility programs where their needs can be addressed. Overcrowding of the correctional system, however, has resulted in problems and delays in meeting the special needs of disabled inmates.

Although planned for implementation in the future, no committees to perform the COH function were operational in March 1983 at the four reception centers. Thus, all school age inmates with handicapping conditions probably had not been identified or placed in appropriate special education programs. As shown in Table B-6, Appendix B, DOCS identified 150 inmates with handicapping conditions in 1982--4.3 percent of the 3,500 school age inmates. As mentioned in Chapter I, research has documented a much higher incidence of handicapping conditions among incarcerated populations. Moreover,

DOCS' incidence of handicapping condition is low in comparison to DFY which identified 38 percent of its youths with a handicapping condition. as of December 1982. In all likelihood, there are additional handicapped school age inmates who have not been identified by DOCS.

Addressing this point in responding to LCER's preliminary and confidential draft report, DOCS states:

> Due to the critical growth in the inmate population over the past few years and the corresponding need to reduce the amount of time available for initial classification at the Reception Centers, many inmates with handicapping conditions have not been identified.
>
> In order to alleviate this problem additional classification staff would be required especially in the Extended Classification area. A minimum of four additional Special Education staff would be required to ensure complete and timely assessment at the Attica, Bedford Hills, Elmira and Downstate Reception Centers.

Educational Program

DOCS' educational program had academic and vocational education components. In 1981-82, State and federal educational program expenditures for inmates age 16 to 21 were estimated at $4.7 million. (See Table B-11, Appendix B.)

Academic. This program "attempts to provide all interested inmates the opportunity to develop the basic skills and to obtain the educational credentials necessary to function more productively and in a more personally satisfying manner during their period of incarceration, and especially when they are released."[21] Available at 28 of the 42 correctional facilities, academic programs ranged from literacy training to college courses. However, due to an overwhelming need, most educational programs were directed at attainment of literacy or the GED degree. Of 2,766 inmates (all ages) enrolled in literacy training during 1982, 1,838 (66 percent) attained literacy. For the GED, 3,297 inmates (all ages) were tested, and 2,118 (65 percent) received the diploma.

Another significant element of the DOCS program was remediation in reading, mathematics and the English language funded by federal ECIA Chapter I, (Program for Neglected and Delinquent Children) at 14 correctional facilities. As of October 1982, 3,017 school age inmates were identified as neglected or delinquent, qualifying DOCS for $1.75 million in federal funds. Performance statistics indicate varying success in achieving Chapter I objectives:

All Ages

Remedial Areas	Instructed And Posttested	Mastering 75% of Objectives	
		Number	Percent
Reading	1,101	774	70
Mathematics	1,348	857	64
English as a Second Language	213	71	33

Vocational. The objective of vocational training is to provide marketable job skills to an inmate when he is released from prison. In 1981-82, 226 vocational shops in 36 occupational areas were operating at 22 correctional facilities. Almost 14,000 inmates were enrolled in the 4,800 occupational training program slots during the year.

Due to a high rate of interfacility transfer of inmates, DOCS established breakdowns of tasks in 33 of the 36 occupational areas. These modules form a standardized course making it possible for inmates to continue progress towards their occupational objectives when they are transferred to a new facility.

Vocational education progress was measured by review of data on enrollment, attendance, utilization of shop facilities and work tasks performed. Since tasks performed may translate into savings to the correctional facility due to work performed by inmates, the amount of money each shop saves also was compiled as a measure of program benefit.

Educational Program Management

DOCS' central office was responsible for educational policy and program development, and for coordinating and monitoring facility education programs. Under the Assistant Deputy Commissioner for Program Services, the Divisions of Education and Vocational Education were responsibile for program oversight. The divisions were separated in 1982 for better coordination between DOCS' vocational training and prison industries efforts.[22]

As indicated, DOCS developed specific educational program objectives and had measured progress towards achieving them, for example:

Academic objectives	Vocational objectives
--Number of inmates becoming literate	--Inmates enrolled and attendance
--Percent of GED candidates tested who passed	--Shop tasks completed
--College degrees/certificates awarded	--Cost savings through DOCS benefit work

Neither the academic nor the vocational program measured achievement of DOCS' educational program purpose: successful reintegration of the inmate into society upon release from prison. DOCS' evaluation efforts did not measure the impact of department educational programs on recidivism or the relative effectiveness of vocational programs on job placement of former inmates.

Conformance to SED Standards

SED reviewed educational programs at Elmira and Coxsackie in April 1981 and found noncompliance with Part 116 standards in ten areas including:

--Occupational education and special education teachers not appropriately certified;

--Lack of correctional facility annual and long range educational plans;

--Absence of the COH function at correctional facilities;

--No implementation of due process, IEP, surrogate parent, notification and reporting requirements; and

--Inadequate special education classes.

Negotiations between SED and DOCS resulted in a draft agreement, which had not been signed as of March 31, 1983. The agreement specifies how DOCS is to comply with teacher certification, facility planning and special education services requirements. DOCS proposed to establish COH functions at each reception center rather than at each correctional facility and to centrally coordinate the referral and delivery of special education services. Exhibit IV shows that as of March 31, 1983, areas remaining unresolved were composition of the reception center committees to perform the COH functions, procedural due process, exercise of the duties of the board of education, need for parental and school district notification, and DOCS employees serving as surrogate parents.

Children Under Office of Mental Retardation and Developmental Disabilities Care

The Office of Mental Retardation and Developmental Disabilities (OMRDD) is responsibile for the care, treatment, rehabilitation, education and training of mentally retarded and developmentally disabled persons. The Mental Hygiene Law defines mental retardation as "subaverage intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior," and developmental disability as "a handicap attributable to mental retardation, dyslexia, cerebral palsy, epilepsy, neurological impairment or autism."[23] As of September 1982, 3,510 children were in OMRDD full-time residential care--1,658 in developmental centers and 1,852 in community settings (intermediate care facilities, family care homes or community residences). See Appendix B, Table B-8.

Types of Admissions

Children are admitted into OMRDD care in three ways: by their parent(s), by themselves or involuntarily. The director of any developmental center may receive any person suited for care and treatment who voluntarily makes written application. If this person is under 18 years old, the application must be made by the parent, legal guardian or next-of-kin. The director also may care for any person alleged to be mentally retarded and in need of involuntary care. The certification of two examining physicians or one examining physician and one certified psychologist, is required for involuntary admission.[24]

Client Population Characteristics

Table B-7 presents age and sex of school age children in developmental centers, 1978 through 1982. It shows a 67 percent decline from 1978 to 1982 in the number of school age children educated in developmental centers reflecting OMRDD's efforts to

deinstitutionalize its population as well as the overall drop in the school population for the same period. (See LCER's November 1980 program audit Use of State Developmental Centers.)

Placement

Table B-8 shows OMRDD placements, by type of setting from 1978 to 1982. Children in care were placed in the following types of facilities:

--Developmental Centers are agency operated intermediate care facilities (ICFs) for persons with developmental disabilities. They provide a program of active treatment, in addition to residential care, for persons who are severely and/or multiply disabled because of mental retardation or other developmental disability. As of December 31, 1982, 1,658 children resided in developmental centers.

--Community Residence Intermediate Care Facilities, for persons with developmental disabilities, are community residential programs accommodating 14 or fewer persons within a group home atmosphere. The facilities provide residential care to individuals who have health or behavioral difficulties but who do not require the intensive services present within a developmental center, hospital, or skilled nursing facility.

--Community-based Intermediate Care Facilities, for persons with developmental disabilities, are community residential programs, which are limited in bed size to between 15 and 200. These facilities are designed to accommodate developmentally disabled individuals who have health-related difficulties but who do not require the intensive intervention of a hospital, skilled nursing facility or developmental center specialized treatment unit.

Individuals accepted as residents of a community-based ICF will generally differ from persons residing in a developmental center. They have need for a less intensive level of programming while still requiring structured care, health services, or other specialized services, or because they comprise a homogeneous population as determined by categorical disability or condition. The 384 facilities served 824 school age residents on December 31, 1982.

--Community Residence is a form of group living arrangement that simulates a conventional home or apartment and provides a learning environment for children or adults who are unable to function adequately in their own homes or to live independently in the community. Community residence programs provide a home-like environment on a long-term or intermediate basis. They may also serve as a transitional living situation prior to movement to a more independent living arrangement. Supportive and supervised community residences had 331 school age residents as of December 31, 1982.

--Family Care is a program of certified family care homes providing care for persons who do not require residential care and treatment in a Developmental Center, or who are unable to function adequately in

their own homes or in community residences, or reside completely independent in the community. Responsibility for treatment and supportive services, however, remains with the agency supervising the Family Care placement. School age children numbered 689 as of December 31, 1982.

Children placed in community settings usually receive educational services from the school district in which the OMRDD facility is located. OMRDD has increased its efforts to place clients in the "least restrictive setting." More clients are being referred to ICFs, which offer services similar to developmental centers, but care for fewer clients. Another reason for the population change is the "mainstreaming" or enrollment of OMRDD resident children in public school programs.

Educational Programming

The Mental Hygiene Law requires that OMRDD provide the same education to resident children that they would receive if attending public school.[25] Children in an OMRDD developmental center are mentally retarded.

All OMRDD clients are presumed capable of benefiting from education and/or training. The goal of the treatment/education/habilitation program is to teach clients self-sufficiency. Programming is designed to maximize competence in: self-help or daily living; cognitive skills; perceptual, fine and gross motor skills; social and/or behavioral skills; communication; learning readiness; and academic skills. An Individualized Education Program (IEP) is developed to prepare the clients for placement in the community or in some other appropriate living environment.

Educational Program Management

OMRDD's Bureau of Education serves as liaison among developmental centers, ICFs and community programs and the central office. Bureau staff review education plans, furnish technical assistance and monitor compliance with OMRDD policies and procedures. Bureau staff report, that as part of this monitoring, clients IEPs are randomly sampled to ascertain the appropriateness of educational programming and progress.

The facility director is responsible for the development of the facility education plan. If the plan does not meet OMRDD approval, bureau staff work with the facility director and the education staff to obtain approval.

Federal ECIA Chapter I (Programs for Children with Handicapping Conditions) money is disbursed by the bureau. In 1981-82, $1,148,611 was distributed to OMRDD facilities (Table B-11).

Conformance to SED Standards

SED's December 1982 agency report of educational programs at ten of 20 developmental centers indicated 13 areas of noncompliance with Part 116 regulations including: length of school day, provision of physical education, confidentiality of records, certification of teachers, planning, composition of the committee to perform COH functions, due process, IEPs, contact with local school districts, accessibility to facilities, and staff training.

As of March 1983, most noncompliance areas were corrected as reflected in Exhibit IV, Chapter IV. Remaining noncompliance areas were not agency wide, but were evident at individual facilities. The principal noncompliance issues were annual and long range planning, procedural due process, and the appointment of surrogate parents. Negotiations towards an interagency agreement between SED and OMRDD were underway with a September 1, 1983 target date for full compliance.

Children in Office of Mental Health Care

The Office of Mental Health (OMH) is responsible for care, treatment, rehabilitation, education and training of the mentally ill. Mental illness is defined as "an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation."[26]

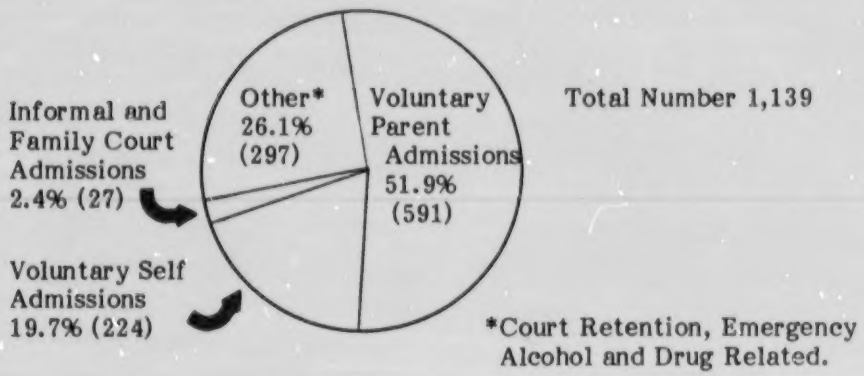
OMH residential treatment facilities for children and youths provide comprehensive mental health services for patients ages five to 21, needing long-term treatment in a residential setting. As of December 31, 1982, 1,186 children, ages five to 21, resided at OMH psychiatric centers. See Table B-9, Appendix B for age and sex of children in OMH care, 1978 through 1982.

Types of Admission

Children and youths are admitted to OMH residential facilities in one of three ways.[27] First, the director of a facility may receive any person in need of care and treatment who voluntarily makes written application. Second, the director may admit a person informally without that person making written application; however, the patient is free to leave the hospital at any time. Third, the director may receive any person alleged to be mentally ill and in need of involuntary care, upon the certification of two examining physicians. Chart 4 shows that 72 percent of the children in OMH care as of March 31, 1982 were admitted voluntarily.

Chart 4

Children in Psychiatric Centers
by Type of Admission
March 31, 1982


Informal and Family Court Admissions 2.4% (27)
Other* 26.1% (297)
Voluntary Parent Admissions 51.9% (591)
Voluntary Self Admissions 19.7% (224)
Total Number 1,139
*Court Retention, Emergency Alcohol and Drug Related.

Source: LCER staff from OMH report, Residence and Leave in Mental Health Services, March, 31 1982.

Children admitted to OMH facilities generally are not in OMH custody. OMH counsel indicated to LCER staff that admission of children and youths to residential treatment facilities (RTF) does not affect a change in custody. If custody of the child is not with a parent or guardian, generally it is with DSS, DFY or some other State agency.[28]

Patients admitted to psychiatric centers need clinical treatment. A patient's judgement may be so impaired that he or she is unable to understand the need for psychiatric care and treatment. All of the OMH school age patients are educationally handicapped.

Types of Placements

OMH operates three types of psychiatric centers: children's psychiatric centers, psychiatric centers with children and/or adolescent services, and adult psychiatric centers. The ages and numbers of children placed at the psychiatric centers as of March 31, 1982 were:

Number of Children by Age and Placement

	Psychiatric Centers			
Age	Children	Children/Adolescent Services	Adult	Total
Under 13	109	44	26	179
13-15	198	79	3	280
16-17	170	103	3	276
18-20	72	55	277	404
Total	549	281	309	1,139

The majority (69 percent) of the children under 18 were in children's psychiatric centers. Youngsters between ages 18 and 20 were most often (69 percent) placed in adult psychiatric centers.

The six children's psychiatric centers generally care for patients under 18 years of age. Each center employs a certified educational administrator and provides educational programming to school age patients. The nine psychiatric centers with children/adolescent psychiatric services have fewer school age patients than the children's psychiatric centers, but still provide elementary-secondary educational programs. The 13 adult psychiatric centers have the smallest population of school age patients, the majority between 18 and 21 years old. Education at the adult psychiatric centers is directed at this older student.

OMH jointly funds 37 group homes in conjunction with DSS. These homes are all operated by DSS authorized child care agencies, although ten of the programs are certified by OMH as community residences. All group homes and community residences are supervised.

Educational Programming

Mental Hygiene Law requires that OMH provide the same education for children in care as they would receive in their local school districts pursuant to Article 89 of the

Education Law.[29] The statute permits the educational program to be adapted to the needs of the patient.

Psychiatric centers offer a variety of therapies and treatments. Individual service plans are required for all OMH patients and include a statement of service goals, methods for achieving those goals, and requirements for periodic review of progress. An individualized education program (IEP) may be included as part of the individual service plan. Often the IEPs are skill oriented with objectives to improve areas such as: daily living, social and/or behavioral skills, communication, and stress management. OMH is required by SED regulations to provide educational programming in the traditional academic courses such as math and English. Other course options are available to the clients based on individual needs and interests. OMH requires that IEPs be prepared for all patients residing in a OMH facility over 30 school days. Educational programming however, may not be suited for every OMH patient, because sometimes education is viewed as a source of increased emotional stress.

The education programs are nongraded special education programs. OMH does not operate a registered secondary education program, and facilities do not issue diplomas. OMH staff advised LCER staff that, whenever possible, facility education coordinators work with the patient's school district to provide appropriate instruction. In several instances the public schools awarded credit for work done at the center. Some of the adult facilities were working with patients to have them take GED examinations.

Educational Program Management

OMH central office is responsible for the development and implementation of agency education policy. OMH has developed agencywide guidelines based on Part 116 standards, which can be adapted to reflect each type of center's educational needs. An example of facility adaptation may be in the number of committees performing the COH function. An adult facility may need one while a children's facility may need several.

OMH central office monitors the agency education program both independently and jointly with SED. SED and OMH staff perform joint site reviews on a three year cycle. The review includes an examination and analysis of patient IEPs to determine the effectiveness of the education program and compliance with Part 116 standards.

Conformance to SED Regulations

During 1980 and 1981, SED reviewed 12 psychiatric center educational programs. SED found noncompliance with Part 116 standards in 17 areas including: due process, assignment of surrogate parents, certification of teachers, membership of facility committe to perform the COH function, annual and long range planning, and provision of progress reports to local districts.

As shown in Exhibit IV in the next chapter, as of March 1983, OMH facilities remain out of compliance with SED requirements for: the 5 1/2 hour school day; equivalent physical education; annual and long range facility planning; chief administrator to exercise duties of the board of education; educational progress reporting to school district COH; and surrogate parent standards. As of September 1983, the two agencies were continuing negotiations to reach an agreement on how OMH will comply with other Part 116 standards.

Youths in Jail

During 1982, over 54,000 youths between ages 16 and 21 were admitted to local jails or penitentiaries in New York State. On any given day about 4,000 youths are in jail under custody of the sheriff or local commissioner of corrections.

Youths come into jail through arrest, preadjudication or presentence custody, or court sentence. A jail sentence may last up to one year; however, the average term of a jail sentence is about 45 days. By law, minors, ages 16 to 21, must be housed separately from adult offenders; detainees must be housed separately from sentenced offenders; and males must be separated from female inmates.[30]

Youths detained or sentenced to jail have severe educational problems as illustrated by these self reported data furnished by the State Commission of Correction:

Inmate Reported Educational Achievement
(Excluding New York City)
1980

Grades Completed	Percent of Total
7-8	9.3
9-12	51.7
Subtotal	61.0
High School Completed	27.4
Other	11.6
Total	100.0

Educators suspect many jailed youths also may be educationally deprived or handicapped.[31] Studies document the prevalence of learning disability among delinquent youths, and emotional disturbance and mental retardation are relatively more prevalent among the delinquent/incarcerated populations.[32]

Preliminary data from research on the characteristics of jailed youths provide some additional insight on their educational needs and problems. For a sample of 126 youths jailed in Albany, Rensselaer, Schenectady and Saratoga counties, as of November 8, 1982, these characteristics were evidenced:

--119 (94 percent) had not completed 12th grade;

--57 (45 percent) had not completed 10th grade;

--14 (11 percent) had completed GEDs;

--76 (60 percent) had dropped out of school, most indicating boredom as the reason;

--34 (27 percent) reported being expelled or suspended from school, with fighting with teachers or peers the main reason;

--29 (23 percent) had been placed in foster homes.[33]

A 1981 Commission of Correction (COC) study stated:

> It is universally recognized that persons detained or sentenced in correctional facilities report greater educational deficiencies than does the population at large. However, the transient nature of local facility populations, their range of needs and the lack of resources, in most facilities, have made the establishment of stable, meaningful educational programs a difficult task.[34]

Statewide, "hard" statistical data are not available to document the educational needs or handicapping conditions of jailed youths. While a few counties collect educational background data on inmates, the COC does not require that such data be gathered or that educational needs assessment be part of the intake procedure for local correctional facilities.

School District Responsibility

Under the Compulsory Education Law, the education of a school age youth in jail is the responsibilty of the school district of residence when the youth was taken into custody. A school district may not drop a student from enrollment unless he or she has been absent 20 consecutive days and a hearing has been held to learn the reason for the absence and what might be done to "encourage and facilitate his or her re-entry (to school) or continuance of study."[35] If a youth is placed in an institution for the care, custody or treatment of children, the school district of residence must furnish educational services to the youth at the institution.[36]

While in jail, youths who have not earned a diploma have the right to instruction until age 21. Even youths who have dropped out of school may reenroll in a program of study. Children with handicapping conditions are entitled to special education services until age 21. Youths who can not read or write at the fifth grade level are mandated to attend school until age 21.[37] Educational services in jails are to be provided or financed by the school district of residence.[38]

County Jail Responsibility

Jails are not considered educational agencies, and the Correction Law is silent on the sheriff's duties regarding educating of youths in custody. Correction Law, however, does authorize the COC to promulgate minimum standards of "care, custody,. . . treatment. . . and other programs" for persons confined in jail.[39] The COC is empowered to visit jails and make recommendations to correctional facility administrators.

The COC has promulgated standards which pertain to treatment areas including vocational and academic instruction. These define the objective of jail or penitentiary education: "to improve the prisoners' employability with supplemental academic education to remedy deficiencies."[40] The standards, viewed by COC as guidelines or suggestions, include:

--Inmate educational needs to be determined;

--School district of residence to be contacted so that an educational program can be developed for the prisoner;

--Best physical facilities with appropriate security and custodial supervision to be available to the educational program;

--Access to be afforded to educators, with adequate orientation to jail procedures to be provided.

While COC observes compliance with these guidelines during field inspections, the the extent to which the State's 57 county jails or penitentiaries are following them is not known.

A 1981 COC survey indicated that 51 of 57 county correctional facilities provided some form of prisoner education program. Generally, educational resources were federally or State funded:

--ECIA, Chapter I (Neglected and Delinquent Children Programs), often the mainstay of jail education-federal;

--Adult Basic Education-federal;

--High School Equivalency (GED)-State.

The most comprehensive education efforts were found in the larger counties. Chapter I programs were available in 29 of 57 counties--generally provided by State University units, school districts or BOCES. Adult Basic Education was furnished in seven of the county correctional facilities and GED programs in nine counties. Eight counties provided some facility supported educational services. Nine counties provided only volunteer programs, while nine others had no educational program.[41]

Since the 1981 survey, COC and SED have cooperatively developed a federally funded $250,000 BOCES operated program to address the special needs of incarcerated youths in seven county jails. This program will continue through the 1983-84 school year.

Conformance to SED Standards

Under Education Law, Section 112, SED is to establish and enforce educational standards for children in full-time residential care including those in "facilities operated or supervised by any state... political subdivision." Thus, city and county jails and penitentiaries fall under SED review for compliance with Part 116 regulations.

SED had completed only one site visit and monitoring report as of March 31, 1983. This report dealt with the Rikers Island Correctional Facility in New York City which houses about 2,000 youngsters or one half of the jailed youths in the State. The report's major findings include:

--Over 500 school age individuals for whom no jail education was available,

--No COH review of inmates suspected of having a handicapping condition to determine educational needs,

--No IEP Phase I development for handicapped inmates,

--Well developed educational program for about 350 students served on any given day, and

--Need for improvement in physical facility for one of the three schools.

Though no other county jails or penitentiaries have been reviewed, some oversight of county jail programs may occur as a result of SED's coordination of Chapter I funding.

Children in Detention

Each year about 12,000 children under age 16 are held in juvenile detention facilities operated by local governments or nonprofit child care agencies. These children usually are alleged JDs, JOs or PINS admitted to detention by the Family Court. The children may be awaiting: court hearing, adjudication or disposition; transfer to an institution to which the child has been committed; or return to another jurisdiction. Additionally, children may be held pending return from AWOL or pursuant to securing order of a criminal court. Detention is directed because of (1) "substantial probability that the child will not appear in court" and/or (2) "serious risk that the child before the return court date, may commit . . . a crime."[42] Children may be held for not more than 45 days, unless otherwise authorized by DFY or by court order.

Each county is to designate an agency of county government to administer juvenile detention care.[43] Of the 57 counties, 55 operate centers or contract with child care agencies for juvenile detention care. In addition, New York City operates several juvenile detention facilities and the State DFY operates a regional secure detention facility at Highland, New York.

DFY Supervision

DFY is required by law to establish regulations for the operation and certification of juvenile detention facilities and to visit and inspect them for awarding, renewing, suspending or revoking certification.[44] As of March 31, 1983, 148 juvenile detention facilities were certified--seven secure detention, five 48 hour holdover and 136 non-secure facilities.

Secure facilities are locked (physically restricting), house 14 or more children, and have more demanding program requirements than nonsecure facilities. The secure facilities admitted 6,512 children during 1981 and housed 308 children as of December 31, 1981.

Nonsecure detention facilities include family boarding homes and DFY agency operated boarding homes (one to six children), group care units (seven to 12 children), and institutional facilities (13 and more children). The nonsecure juvenile detention facilities admitted 5,842 children during 1981 and housed 243 children as of December 31, 1981.

While detention is supposed to be temporary (restricted to 45 days), 19 percent of the children were detained longer than one month, while almost nine percent were held more than two months:

Length of Stay in Days	Releases from Juvenile Detention					
	Secure		Non-Secure		Total	
	No.	%	No.	%	No.	%
10 or Less	4,319	67	2,859	53	7,178	60
11 to 30	1,146	18	1,424	26	2,570	22
31 to 60	546	8	722	13	1,268	11
61 or More	484	7	416	8	900	8
Total	6,495	100	5,421	100	11,916	101

According to DFY, the length of stay averaged 21 days in secure detention and 30 days in nonsecure detention during 1981.

These statistics highlight the importance and need for educational services to children in detention. As is the case for DFY youths and youngsters in jail, children in juvenile detention tend to have educational deficiencies and may have handicapping conditions. Because they are under the compulsory education age of 16, children in detention must be educated under State law.

School District Responsibility

The education of children in detention is the responsibility of the school district of residence.[45] The district is responsible for determining the educational needs of each detained child and must provide needed educational services by tutor, by contract with another school district or by other means.* LCER staff interviews with SED and DFY personnel indicate that school districts of residence seldom were providing these services.

DFY Oversight

DFY regulations[46] require that each juvenile detention facility provide educational services necessary to assure "proper care and treatment of children." This is to include teachers and remedial educators "eligible" for State certification. DFY regulations require that in institutional settings, a minimum of three hours of educational activity be

*In discussing the preliminary and confidential draft of this report, SED officials disagreed with this LCER staff interpretation. SED writes: "The responsibility of the school district of residence for youth in detention facilities under Section 3202.7 of the Education Law has not been established. Currently, County Law, Executive Law and DFY regulations govern the provision of educational services to youth in what are DFY supervised detention facilities. Counties are presently assuming the responsibility for the provision of educational services to youth in secure detention facilities and nonsecure facilities when such youth are confined to the center and unable to attend public schools. When youth are attending public schools the fiscal responsibility applied varies from county to county. In some counties, school districts treat these youth as non-residents pursuant to Section 3202.4 of Education Law and charge back additional operating costs to the child's district of residence. In other counties the school districts or counties simply assume costs. In summary, at this time it is unclear as to which provisions of law encompass the education of youth in detention facilities. Therefore, references to those responsibilities falling under Section 3202.7 are inappropriate."

provided to a child each school day. The Education Law and Part 116, Commissioner's Regulations also provide requirements for detention center education. DFY regulations, however, were in conflict with SED hours of instruction, teacher certification and several other requirements. Further, DFY regulations did not mention the school district of residence's responsibility for the education of children in detention, or require that the school district of residence be contacted to assure the provision of educational services to the child.*

Conformance to SED Standards

As of March 1982, SED had reviewed Part 116 compliance at only one DFY certified juvenile detention facility. Located in New York City, the Spofford Juvenile Center is the largest juvenile detention facility in the State, housing 178 children as of December 31, 1981. The SED review documented deficiencies as illustrated by Exhibit IV in the next chapter. Most pronounced were the absence of a committee to function as a COH, lack of a 5 1/2 hour school day, uncertified teaching staff and failure to meet curriculum and special education requirements.

Adequacy of compliance with Part 116 standards had not been reviewed at the other 147 juvenile detention facilities in the State. However, SED and DFY officials report that similiar noncompliance is expected to be found.

Under the Compulsory Education Law responsibility for education of children in detention is placed with the school district of residence. DFY and SED officials indicate that few districts accept this responsibility.* Lack of a notification procedure in DFY regulations may be a contributing factor. However, school districts also may place low priority on providing educational services to youths in detention.

Children in Department of Health Care

Helen Hayes Hospital

The Department of Health (DOH) operates and provides most funding for the Helen Hayes Hospital. The hospital may receive persons "who are physically disabled, deformed or are suffering from disease from which they are likely to become physically disabled or deformed."[47] Patients include children and adults with physically disabling conditions chiefly affecting the nervous and muscular skeletal systems. During 1981-82 the hospital provided educational services for 83 children between the ages of two and 21. The average daily census was 13 children during 1982.

Educational Program. The hospital school offers educational programs to all inpatient children. Special classes were provided for children until graduation. The school offers high school equivalency preparation and testing. Children age six and over are given a full day of instruction.

Educational needs are assessed upon a child's arrival and an IEP is developed for each child staying longer than 30 days. The average placement is for three months. Disabled students at or above the high school grade level may choose to take an occupational education program.

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*See footnote, preceding page.

Conformance to SED Standards. SED's February 1981 review describes the educational program as efficiently operated, but out of compliance with basic requirements for: administrator and teacher certification, an operating committee to perform the COH function, special class size, surrogate parents comprehensive education planning, IEP, educational progress reporting, due process procedures, and placement in the least restrictive setting.

As shown on Exhibit IV in the next chapter, Helen Hayes Hospital was in compliance with all Part 116 standards, as of March 1983.

Nursing Homes

DOH and SED did not know the number of school age children in nursing home care during 1982. The Compulsory Education Law requires that each minor age six to 16 attend full-time education programs and that the school district of residence provide educational services when a child is placed in a nursing home.[48] While DOH regulates and licenses nursing homes, the department does not require nursing home administrators to contact the child's school district of residence to assure that educational services are provided. SED has not monitored compliance of nursing homes with the Part 116 standards.

In February 1983, SED convassed 40 long-term care nursing homes to learn how many children, under age 21 were residing in those facilities and how their educational needs were being served. Three children were located, of whom two were receiving services from school districts.

Children in Alcoholism Rehabilitation

In 1978, as part of the Department of Mental Hygiene reorganization, the Division of Alcoholism and Alcohol Abuse (DAAA) was established as an autonomous agency, operating within the Office of Alcoholism and Substance Abuse. The division coordinates the planning and implementation of alcoholism treatment services to State residents.

New York State has over 400 locally operated alcohol abuse programs, including approximately 56 residential programs. The division also operates 13 residential alcoholism treatment centers (ATC) at psychiatric centers. ATCs provided intensive alcoholism rehabilitation services to aproximately 3,450 patients in 1981-82 including 135 school age children or youths (see Appendix B, Table B-10). The average length of stay in an ATC was 43 days, ranging from 26 to 64 days in rehabilitation units. The centers served an average of 453 persons daily.

Most of DAAA's population is over 21 years old. Children between the ages of 15 and 21 accounted for only four percent of the population total--about ten to 15 children on an average day. Children remain in legal custody of parents or guardians. Children in State operated ATCs are in State care, while those in local residential programs are in local care.

DAAA regulations specify that local residential programs provide direct services to patients in accordance with individual plans of care, treatment and rehabilitation. An

educational-vocational evaluation also is required. State operated ATCs must provide similar services. However, the regulations do not require either ATCs or residential facilities to provide educational programming to children in care.[49]

The Compulsory Education Law requires that each minor, age six to 16, attend full-time instruction, and that each person age 17 to 21 unable to speak, read or write at the fifth grade level attend evening instruction. The school district of residence is responsible for arranging tutorial or other educational services for such children. If necessary, the school district of residence may contract with another school district to provide appropriate tutorial services for a child temporarily placed in that district.[50] The extent to which children in ATCs are receiving appropriate educational services is not known by DAAA or SED.

Alcoholism in itself is not a educationally handicapping condition. If a child placed in an ATC has been identified as having a handicapping condition, the COH of the child's school district of residence must assure that appropriate educational services are provided pursuant to Part 200, Commissioner's Regulations.

DAAA officials have indicated to LCER staff that there is no State requirement that ATCs notify the school district of residence when a child of school age enters treatment. SED has not monitored ATC compliance with Part 116 standards.

Children in Substance Abuse Programs

The Division of Substance Abuse Services (DSAS) is responsible for planning, developing, funding and regulating the comprehensive statewide network of substance abuse programs providing preventive treatment and rehabilitative services. Financed with a combination of State, local, federal and private resources, 420 treatment programs operated throughout the State during 1982. DSAS funded 187 community-based treatment and rehabilitation programs and 100 prevention programs, primarily school-based. The remaining 133 programs were funded by non State sources.

As of February 28, 1983, 40,062 patients were in 187 treatment or prevention programs. School age children comprised approximately 44 percent or 17,632 of the total population. According to DSAS officials, most of these children were in school-based prevention programs. The school age population in residential treatment was 374, as of December 1982.

DSAS does not have any mandated responsibility to offer educational programming in treatment centers. Under the Compulsory Education Law, however, the division does have the responsibility to see that school age children in its care are provided with appropriate educational services by the child's home school district. DSAS has not monitored its treatment centers to assure that this is being done. However, the DSAS Counsel has opined "that the Compulsory Education Law does not require the Division to make these assurances, since children in residential treatment are not in the care of the Division."[51]

Some of the locally operated treatment center programs were designated as public school annexes with certified teachers providing on-site educational services. Approximately 30 such annexes with about 750 students were served by the New York City Board of Education.

SED has not reviewed drug treatment center compliance with Part 116 standards. However, SED officials advised LCER staff that DSAS facilities in New York City and Phoenix House in Westchester County place their children in public schools, thus SED officials conclude that Part 116 review would not be mandated, although the education of children in DSAS care falls under SED supervisory responsibility under Education Law, Section 112.

Chapter Summary

- Neither DSS nor SED collected data on the educational progress of 26,753 school age children placed in foster care as of December 1982. Though SED retains information on a few foster care children placed by school districts under Article 89, the prevalence of handicapping conditions for the bulk of this foster care population is unknown.

- DSS did not review or monitor the educational performance of children in foster care.

- The local social services districts had custody of children placed in foster care and were responsible for case planning and management, including oversight of the child's educational progress.

- SED monitored the educational performance of foster care children who were placed in child care institutional schools, and those placed in school district programs for children with handicapping conditions. SED did not monitor the educational performance of nonhandicapped foster care children in regular school district programs, because SED viewed this as a school district function. Neither DSS nor SED reviewed the adequacy of the school districts' performance of this function.

- DFY's educational program served about 1,500 youths residing in DFY facilities. The remaining 2,500 youths, residing in DFY community facilities, foster homes and alternative placements attended public schools in the community.

- DFY did not have an effective system to monitor the educational progress of youths. Little was known about the educational status or progress of DFY youths placed in the community. The school district was viewed by both DFY and SED as having primary responsibility for assuring educational progress of these youths. However, neither DFY nor SED was reviewing the adequacy of the school district's performance.

- DOCS has an education program for 2,100 of 3,500 inmates age 16-21. Objectives of the remedial and vocational programs were to help inmates obtain jobs and to successfully return to society.

- The academic and the vocational program measures did not reflect the achievement of the DOCS' educational program purpose: successful reintegration of the inmate into society, upon release from prison. DOCS' evaluation efforts did not measure the impact of department education programs on recidivism or the effectiveness of vocational programs on job placement of inmates upon their release.

- OMRDD monitors the educational progress of 1,800 children living in community programs or residences. In addition, SED monitors school district educational services for all children with handicapping conditions, including these OMRDD children.

- The educational needs or handicapping conditions of 4,000 youths in local jails were unknown. The Commission of Correction had not promulgated standards mandating that these needs be identified and that school districts responsible for providing educational services to jailed youths be notified of a youth's incarceration.

- Though responsibility for the education of children in local detention is placed with the school district of residence, few districts were accepting this responsibility according to DFY and SED officials. Lack of a notification procedure in DFY regulations may be contributing to this situation. School districts may also place low priority on providing educational services to youths in detention.

- DOH and SED did not know the number of children under nursing home care at any given time during 1982. Neither agency had monitored the educational programming for these youngsters.

- DAAA and DSAS did not provide educational services to their school age residents nor did they require treatment centers to contact the school district of residence to assure continuity of educational services to clients.

IV PROGRAM OVERVIEW

The State's system to educate children in full-time residential care or custody reflects the many and varied reasons for a child's placement in care. Youngsters may receive care because of delinquency or neglect or other social, economic or health needs, and education may not be the primary consideration in placement. Educational services, however, are a common denominator of all ten agency residential programs.

This chapter examines the State's complex child care education program by comparing:

--Agency roles and responsibilities in educating children under care or custody;

--Fiscal implications of the methods of financing education for those children; and

--State agency compliance with SED's Part 116 standards.

Agency Roles and Responsibilities

Including SED, ten State agencies have responsibilities for education of children under their full-time residential care or supervision. For this review, the agencies are classified by whether they provide direct educational services, indirect educational services, or no educational services but retain responsibility for the child's care.

Direct Educational Services

Six State agencies operate schools and provide direct educational services to children in care or custody. As shown in Table 5, an estimated 6,045 children and youths were in State operated schools as of December 1982. Available data on the combined State-federal estimated expenditures for these programs show that about $39 million were spent in the 1981-82 school year. The State operated educational programs serve two types of children in care: those with handicapping conditions and those placed in State agency custody by the courts.

Handicapping Conditions. OMH, OMRDD, DOH and SED educational programs serve children with specific handicapping conditions. With few exceptions, these children have parents or a guardian and are not under State custody or considered to be wards of the State. State agencies, however, are entrusted with their care while they are in full-time residence at State facilities; and SED supervises their education to assure minimum conformance to Part 200 standards (programs for children with handicapping conditions).

State Custody. DOCS inmates and DFY youths are sentenced or placed in the agency's custody by the courts. The agency's educational programs are viewed as an important part of the rehabilitation process. Because of the educational deficiencies of the youths in these populations, the educational programs emphasize remediation in reading, writing, math, and vocational training. Though 38 percent of DFY youths were found to have handicapping conditions, only about four percent of DOCS inmates in the 16 to 21 age group were identified as handicapped.

Table 5

State Agency Estimated Expenditures
for Direct Educational Services for
Children in Care or Custody

State Agency	Estimated Number of Children in Agency Schools December 31, 1982	1981-82 Estimated Expenditures for Education (000s) State	Federal	Total
Department of Correctional Services	2,100	$2,935.8	$1,750.0	$ 4,685.8
Division for Youth	1,500	3,940.4	2,358.1	6,298.5
Office of Mental Health	1,186	7,229.5	757.9	7,987.4
Office of Mental Retardation and Developmental Disabilities	949	12,574.2*	1,148.6	13,722.8
State Education Department	297	5,100.0	997.2	6,097.2
Department of Health	13	9.5	11.0	20.5
Total	6,045	$31,789.4	$7,022.8	$38,812.2

*One half of this amount is reimbursed by federal Medicaid.

Source: LCER from responses to Agency Data Requests.

Indirect Educational Services

Four State agencies provide educational services for children in care or custody through payment of tuition or other education cost reimbursements. Table 6 illustrates that, excluding Family Court ordered placements, the four agencies paid $22.9 million to educate at least 7,974 children residing in State facilities, child care institutions, or family and group homes. However, it should be emphasized that certain State expenditures for education of foster care children placed in school district education programs are not included since they can not be calculated. For example, not known is the amount of regular and excess cost State aid paid to school districts to educate foster care children in the community and attending public school or BOCES programs.

SED alone spent an estimated $42.9 million in 1981-82 for tuition for children with handicapping conditions placed in:

--853 out-of-State private schools;

--853 in-State schools (grandfathered under State payment pursuant to Education Law, Section 4407);

--4201 schools for the Blind and Deaf;

--Developmental centers and ICFs but attending public school or BOCES programs;

--Family Court ordered preschool or summer school programs.

Table 6

State Agency Expenditures for Indirect Educational Services
for Children in Full-Time Residential Care or Custody
1981-82

Agency	Estimates	
	Number Students	Tuition Amount (Millions)
State Education Department*:		
853 school out-of-state*	501	$ 4.5
853 school in-state (4407)*	114	0.9
4201 schools (state Supported)	366	4.3
Family Court Ordered	N/A	33.2
Reimburse school districts for children in OMRDD	595	NA
Total	1,576	$42.9
Department of Social Services	6,300+	$11.4
Division for Youth	N/A	1.3
Office of Mental Retardation and Developmental Disabilities	98	0.5
Total	7,974+	$56.1

*Excludes children placed by school districts in 853 or Special Act School District on a residential basis.

Source: SED, letter and attachment to LCER staff from Assistant Commissioner, OECHC, April 6, 1983; DSS, DFY, OMRDD data submissions to LCER staff.

DSS reimburses local social services districts (SSDs) for 50 percent of the tuition costs of foster care children educated in school district or BOCES schools, while DFY reimburses the local SSDs for 50 percent of the tuition costs for educating DFY children. Finally, OMRDD and OMH pay tuition costs for children residing in their centers but attending private or 853 schools.

Variation in Agency Oversight

Each of the six agencies furnishing direct education to children through State operated schools performs some monitoring of the educational status and progress of children in care or custody. As discussed previously, DFY, DOCS, OMRDD, OMH, DOH and SED have policies requiring development and review of individualized goals for each child. Agency central staffs are responsible for educational policy direction and for monitoring the effectiveness of facility education programs.

When children leave the State-operated educational programs in agency schools, State agency central office attention to their educational status and progress decreases. DSS and DFY, for example, could not account for the educational status and placement of children placed in the community, nor did they review the educational performance of children attending public schools or BOCES. These functions were viewed as the responsibility of the school district providing educational services. Neither DSS nor DFY had assessed the extent to which public schools were carrying out these tasks. These were thought to be a SED responsibility. However, SED does not provide any monitoring of the educational progress of these children, other than oversight of programs for all handicapped youngsters.

No Educational Services

DFY is responsible for licensing juvenile detention facilities throughout the State. The division has promulgated some standards for education services to children in custody, but has not required detention facilities to notify the child's school district of residence when the child is admitted.

Charged to oversee the adequacy of local jail and penitentiary care and to promulgate standards for the care and treatment of jail inmates, the COC had promulgated standards for educational services to jailed youths. However, these were nonmandatory guidelines with little known effect.

Finally, DOH (nursing homes only), DAAA and DSAS license or supervise nursing home or full-time residential treatment programs serving children. None of these agencies had promulgated standards requiring educational programs for children in care, nor had they emphasized educational services to children in their license review and inspections.

Fiscal Implications of Funding

The methods by which tuition, maintenance (room and board) and pupil transportation are funded for children in State agency care or custody are varied and complex. How these costs are paid depends upon (1) the State agency or political unit placing the child, (2) the location or setting where the child is attending school, and/or (3) whether or not the child has a handicapping condition. For purposes of analysis, the following discussion presents the funding methods in two parts, consistent with the preceding chapters' discussions.

Exhibit II examines the financing of tuition, maintenance and pupil transportation for children placed by school districts, Family Court or SED in residential or nonresidential programs supervised by SED. Each program is subject to direct SED review and oversight, and the department may enforce its supervision through tuition rate review and program approval or rejection.

Exhibit III pertains to educational placements by State agencies other than SED which are subject to the general monitoring of SED, but operate under the particular agency's management, financing and control. While SED may review these programs and recommend changes, the discretion to implement SED recommendations remains with the agency and the Division of the Budget.

Exhibit II

Tuition, Maintenance, and Pupil Transportation Financing
for Children With Handicapping Conditions Placed in State Supported/Operated Schools
Supervised by State Education Department (SED)

Type of Placement	Tuition	Maintenance	Pupil Transportation	Tuition Reimbursement
Out of State "853" Schools	SED (E.L.§ 4407)	Local S.S.D., DSS reimburses 50% of approved cost	Placing S.D., with State pupil transportation reimbursement of approved costs [E.L.§ 4401 (4)]	Placing S.D. pays "basic contribution" to State.
In State "853" School	If placed prior to July 1, 1976 SED (E.L.§ 4407) If placed on or after July 1, 1976 Placing S.D. (E.L. § 4402)	Local S.S.D., DSS reimburses 50% of approved cost	Placing S.D., with State pupil transportation reimbursement of approved costs [E.L.§ 4401 (4)]	Placing S.D. pays "Basic Contribution" to State If placed on or after July 1, 1977 (E.L. §4407) Placing S.D. reimbursed by State Excess Cost Formula (E.L.§ 4401)
"4201" School	SED (E.L.§ 4204)	SED (E.L.§ 4204)	S.D. of Residence with State pupil transportation reimbursement of approved costs [E.L.§ 4405(2)]	S.D. of Residence pays "basic contribution" to State (E.L.§ 4204-b)
Family Court Ordered (If SED Approved)	1/2 County or NYC 1/2 SED [E.L. § 4406 (2)]	1/2 County or NYC 1/2 SED [E.L.§ 4406 (2)]	1/2 County or NYC 1/2 SED [E.L.§ 4406 (2)]	NONE
Deaf Infant Program	SED	N/A	NONE	NONE

Abbreviations: S.D.-School district, E.L.-Education Law, Local S.S.D.-county or city social services district financially responsible for the child, N/A-Not Applicable.

Source: *LCER Staff.*

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Exhibit III

Tuition, Maintenance and Pupil Transportation Financing for Children Under Care/Custody of State Agencies and in Educational Programs Monitored by the State Education Department

State Agency of Care/Custody	Tuition	Maintenance	Pupil Transportation	Tuition Reimbursement
Department of Social Services Placement				
In child care institution, on Campus school	Local S.S.D.*	Local S.S.D.*	N/A	If child has a handicapping condition S.D. of residence pays "basic contribution" to State [E.L. § 4404 (2) (a)]
In child care institution, in S.D.	Local S.S.D.*	Local S.S.D.*	Local S.S.D.*	If child has a handicapping condition, S.D. of residence pays "basic contribution" to State [E.L. §4004 (2) (a)]
In family or group home at state support	If placed before 1/1/74 Local S.S.D.* Placed on or after 1/1/74 S.D. of residence pays "additional operating costs" to S.D. of attendance	Local S.S.D.*	S.D. of attendance pays, and may claim State pupil transportation reimbursement; net costs may be charged back to S.D. of residence	If placed on or after 1/1/74 and if child has a handicapping condition, S.D. of residence claims State excess cost aid; S.D. of attendance claims operating aid.
In free family home and children at board, but not at local S.S.D. or State expense	S.D. of attendance (Same as S.D. of residence)	N/A	S.D. of attendance pays, and may claim pupil transportation reimbursement.	S.D. of attendance (residence) may claim appropriate State aid.
Division for Youth Placement				
In DFY facility school	DFY [E.L. §3202 (7/9)]	Local S.S.D.* (Ex. L. §529)	DFY	None
In residence at DFY facility but educated in S. D., BOCES or other school	S.D. of residence pays cost of DFY contract with S.D. of attendance. [E.L. §3202 (7-a)]	Local S.S.D.* (Ex. L. §529)	S. D. of attendance pays, may claim pupil transportation aid and may bill back net cost to S.D. of residence.	None
In child care institution, educated by on campus school	Local S.S.D. pays, DFY reimburses local S.S.D. for 50% per diem costs [Ex. L. §529]	Local S.S.D.* [Ex. L. §529]	N/A	If child has a handicapping condition S.D. of residence pays "basic contribution" to State. [E.L. §4004]
In child care institution, educated in S. D., BOCES or other school	Local S.S.D. pays, DFY reimburses local S.S.D. for 50% per diem costs [Ex. L. §529]	Local S.S.D.* [Ex. L. §529]	Local S.S.D.*	If child has a handicapping condition S.D. of residence pays "basic contribution" to State. [E.L. §4004]
Office of Mental Health Placement				
At psychiatric center and educated there or at private school	OMH	OMH	N/A	None
At psychiatric center, educated by S. D., BOCES	S.D. of residence [MHL §33.11]	OMH	OMH	S.D. of residence may claim State excess cost reimbursement
In a residential treatment facility (RTF)	Local S.S.D., State reimburses 100% of SED approved cost [E.L. §4004] **	OMH	N/A	S.D. of residence pays "basic contribution" to State [E.L. §4004]
At day treatment at OMH facility (child lives at home)	Some S.D.'s provide education at OMH facilities (NYC, Elmira, Rochester) Others do not; OMH pays costs	N/A	No Procedure Established	None
Office of Mental Retardation/Developmental Disabilities Placement				
At developmental center (resident or day)	OMRDD	OMRDD	Resident OMRDD Day S.D. of residence	None
At developmental center, educated in S. D., BOCES	SED to reimburse S.D. for direct cost of educational services [E.L. §3202 (5) (c)]	OMRDD	OMRDD [E.L.§4402(4)(a)]	Child admitted before 7/1/78 No reimbursement by S.D. of residence Child admitted on or after 7/1/78 S.D. of residence pays "basic contribution" to State

Exhibit III (Cont.)

State Agency of Care/Custody	Tuition	Maintenance	Pupil Transportation	Tuition Reimbursement
At developmental center, educated in 853 school	OMRDD	OMRDD	OMRDD	None
In a family home at board, an orphan anylum or other institution for care, custody or treatment of children, educated in S. D., or BOCES or 853 school	SED to reimburse S.D. of attendance for direct cost of educational services [E.L. §3202 (5)]	OMRDD	Placing S.D. may claim State pupil transportation reimbursement [SED Handbook]	OMRDD Assumed responsibility for child before 7/1/77 No reimbursement OMRDD assumed responsibility for child on or after 7/1/77 S. D. of residence pays "basic contribution" to State [E.L. 3202 (5)(b)]
At private or voluntary intermediate care facility (ICF), educated by S. D., BOCES or 853 school	SED to reimburse ICF for 100% of non federally reimbursable costs [E.L. §3202 (5)(d)]	OMRDD	Included in tuition reimbursment to ICF [E.L. 3202 (5)(d)(3)]	S.D. of residence pays "basic contribution" to State E.L. §3202 (5)(d)(4)]
Department of Health				
Helen Hayes Hospital	Law requires that S.D. of residence pay for educational services directly or via contract. However, DOH policy is to pay educational costs within its budget [E.L. §3202 (7)]	DOH	N/A	None
Skilled nursing homes	S.D. of residence pays for educational services directly or via contract [E.L. §3202 (7)]	N/A	N/A	None
Commission of Correction Children in local jails/penitentiaries	S.D. of residence pays for educational services, directly or via contract [E.L. §3202 (7)]	Local Government	N/A	None
Division for Youth Children in juvenile detention facilities	S.D. of residence pays for educational services, directly or by con tract [E.L. §3202 (7)]	Local Government	N/A	None
Division of Alcoholism and Alcohol Abuse Placement				
In DAAA residential treatment facility (on grounds of psychiatric center)	S.D. of residence pays for educational services, directly or by contract [E.L. §3202 (7)]	DAAA	N/A	None
Division of Substance Abuse Services Placement				
In licensed residential facilities (New York City)	S.D. of residence pays for educational services, directly or by contract [E.L. §3202 (7)]	NYC	N/A	None
State University of New York Campus School	SUNY campus operating expenditures Buffalo Center	N/A	None	None

*DSS reimburses 50% of SED appr ved cost.
**Exact reimbursement methodology was not established as of August 1983.

Abbreviations: S.D.-School District; E.L.-Education Law; Ex.L.-Executive Law; MHL-Mental Hygiene Law; Local S.S.D.-County or city social services district financially responsible for the child; N/A-not applicable; DFY-Division for Youth; OMRDD-Office of Mental Retardation and Developmental Disabilities; OMH Office of Mental Health; DOH-Department of Health; DAAA-Division of Alcoholism and Alcohol Abuse.

Source: LCER Staff from SED Monitoring reports and interviews with DICSS staff.

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SED Supervised Educational Placement

Exhibit II shows funding variations in tuition, maintenance and pupil transportation for educational programs directly under SED supervision. In 1982-83 these programs served 2,353 children with handicapping conditions. These children were placed in State full-time residential care, but usually remained under custody of parents or guardians. (See Chapter II.)

Exhibit II also includes Family Court ordered preschool and summer school placement and SED approved deaf infant (under age three) placements. Both programs generally are nonresidential but are included here because of SED's direct supervision and approval of placements.

SED pays tuition if a child is placed in (1) an out-of-State 853 school; (2) an in-State 853 school, if placed before July 1, 1976; or (3) a 4201 school--including the State School for the Blind in Batavia and the State School for the Deaf in Rome. In the first and third of these instances the school district pays the State a "basic contribution"--an amount equal to the total school district local property and nonproperty tax levy per pupil unit. If a school district places a child in an 853 school, however, the district bears the full tuition cost and then files for State excess cost reimbursement. Due to high tuition costs and school district variation in taxable wealth and nontax revenues, some districts may benefit financially if a child is placed in an 853 school out-of-State or a 4201 school. This occurs because the major share of tuition cost would be transferred from the school district to the State.

Another variation occurs in financing maintenance costs. The local social services district pays room and board if a child is placed in an 853 school, while SED pays these costs if the child resides in a 4201 school. Thus, aside from the question of appropriate programming and services, there appears to be a financial disincentive for the local social services district placing the child in an 853 school compared to a 4201 school.

A similiar disincentive may exist for school districts placing a child with a handicapping condition in preschool or summer school. If the school district makes this placement without court order, the district may have to absorb the tuition costs. If the Family Court makes the placement, the district bears none of the costs because expenditures would be shared by the county and SED.

Not shown in the Exhibit is a disparity which occurs in the Supplemental Security Income (SSI) financing of costs for children in private residential schools. If a SSI eligible child is placed in an 853 school by a school district, full SSI payments continue to be made to the child's parents or guardian, while the SSD pays the room and board for the child at the 853 school. However, if the child is placed in the 853 school by a SSD, the SSI payment is diverted and budgeted to defray the SSD's expenditures for the child's room and board at the school.

State Agency Educational Placement

Exhibit III shows tuition, maintenance and pupil transportation financing arrangements for children under custody or care of State agencies other than SED. Variations in funding arrangements among the several State agencies are discussed below.

Department of Social Services. If a child is placed in a child care institution, tuition costs are paid by the local social services district responsible for the child. The local social services district must pay these costs whether or not the child is handicapped

irrespective of where the child is educated, i.e., in the child care institution or in the school district. One-half of the local social service district's tuition expense is reimbursed by DSS.

If the child has a handicapping condition, the school district of residence must pay a basic contribution to the State; however, no basic contribution is required if the child is not identified as handicapped. Thus, the school district incurs a financial penalty in identifying children with handicapping conditions.

If a foster care child is placed in a family or group home at State support, the school district of residence must pay the "additional operating costs" of educating that child to the district providing the educational services. Therefore, a school district of residence does not have to pay for tuition if the child is placed in a child care institution, but does have to pay if the child is placed in a family or group home.

Division for Youth. If placed in a DFY facility with a school, the youth's educational cost is absorbed by DFY. No basic contribution is paid by the school district of residence, even if the youth has a handicapping condition.

If the youth lives in a DFY facility but is educated in a school district or a BOCES, the school district of residence is responsible for reimbursing DFY for the contract costs of the educational services.

If the DFY youth is placed in a child care institution, the same financial arrangements as for a foster care child apply; that is, the local social services district pays the tuition; however, DFY reimburses the local social services district for 50 percent of the costs.

Office of Mental Health. OMH funds the educational services for children residing in and educated at a psychiatric center and pays the tuition for children residing in a psychiatric center and attending an 853 school. In either case the school district of residence does not pay a basic contribution to the State.

If a child residing in a psychiatric center is educated in a school district or BOCES program, the school district of residence pays tuition to the school district of attendance. If a foster care child resides in a residential treatment facility (RTF), the local social services district pays the tuition, with a payment of a basic contribution by the school district of residence. However, for a non foster care child residing in a RTF, the State is to reimburse 100 percent of the educational expenditures on behalf of the child. No method had been established for this reimbursement as of August 1983.

Office of Mental Retardation and Developmental Disabilities. OMRDD pays the education costs for children residing in developmental centers and attending school in the center or at 853 schools. No basic contribution is required from the school district of residence. However, if a child residing in a developmental center, an intermediate care facility (ICF), a family home, an orphanage or other institution is educated in a school district or BOCES program, SED pays the entire cost of the educational program and the school district of residence pays a basic contribution. SED's full funding of educational services for children placed in school districts is unusual compared with local social services district funding of DFY, OMH and foster care children in similar educational settings.

Other Placement. One standard educational charge applies to children: (1) in DOH care at Helen Hayes Hospital or at a skilled nursing home, (2) under Commission of

Correction supervision in local jails or penitentiaries, (3) in DFY licensed detention facilities, (4) in residential treatment facilities licensed by DAAA and (5) in DSAS licensed residential facilities. In these instances the school district of residence is responsible for assuring that children or youths are receiving appropriate educational services; the district is supposed to arrange and pay for needed services.

Conclusion

The financing of education of children under care or custody of State agencies involves incentives, disincentives and fiscal impacts which can affect the educational placement decision. The identification of a child with a handicapping condition, for example, may involve costly fiscal ramifications for the school district of residence, the child care agency or the State agency responsible for that child's care or custody. Who pays or shares in the educational costs, depends upon the placement. Moreover, by simply transferring a child to a different placement, it is possible to change the method of paying for that child's educational services. State and local governments clearly have a financial interest in the placement decisions and such decisions may not always be made in an atmosphere of fiscal neutrality.

SED Monitoring

SED has responsibility to ensure that all children in New York State receive a free appropriate education. To fulfill this mandate, SED has promulgated standards for educational programs and has performed compliance reviews of school district, BOCES, private school and State agency educational programs.

SED's oversight of educational programs for children in care or custody of State agencies or political subdivisions is established by Education Law, Section 112.

> The education department shall establish and enforce standards of instruction, personnel qualifications and other requirements for education services or programs, as determined by rules of the regents and regulations of the commissioner, with respect to the individual requirements of children who are in full-time residential care in facilities or homes operated or supervised by any state department or agency or political subdivision.

Part 116, Commissioner's Regulations establishes basic educational standards for children in full-time residential care of State agencies or political subdivisions of the State. Additionally, Article 89 of the Education Law requires SED to inspect and approve school district, BOCES, private school and State agency educational programs for children with handicapping conditions. Part 200, Commissioner's Regulations provides standards and required procedures for that purpose. Further, Article 81 of the Education Law guarantees a free and appropriate education in the least restrictive environment to all children, whether handicapped or not, who are placed in child care institutions.

Organization

SED's Office of Education of Children with Handicapping Conditions (OECHC) is responsible for the department's oversight of educational programs for children under care or custody of State agencies. This involves on-site visits and reviews of compliance with

Part 116 and Part 200 standards as appropriate for a particular agency or institutional school or program. OECHC's Division of Interagency Cooperation and Support Services (DICSS) monitors State agency, private residential school and out-of-State school programs. The Division of Program Monitoring (DPM) reviews local education agency and nonresidential private school programs.

SED has developed and revised a Special Education Program Review Guide to assist SED staff in reviewing such programs. Compliance with federal and State law and regulations (as well as other programmatic issues) is reviewed through a number of activities such as:

--Interviewing administrators, instructional and residential staff, and related service providers;

--Examining clinical and education reports, individualized education programs and COH minutes;

--Observing classroom instruction and the provision of related services;

--Reviewing the board policies related to educating handicapped children;

--Inspecting facility plans, staff certifications, class lists, and teachers' schedules; and

--Examining forms used in the referral, evaluation and placement process for children with handicapping conditions.

Following each on-site visit, a report identifies strengths and/or weaknesses of the educational programs, and schedules are developed for correcting specific problem areas.

Both DICSS and DPM operate on a three year field visit cycle, targeting coverage of all educational service providers during that period. As of January 1983, DICSS had completed 145 on-site reviews of educational programs operated and/or licensed by OMH, OMRDD, DFY, DSS, DOCS, DOH and the Commission of Correction. Similarly, monitoring of 4201, deaf infant program and neglected and delinquent programs was conducted. DPM also had conducted 1,200 site reviews including school district, BOCES and private residential school day programs. Table 7 presents the professional and nonprofessional staffing of the two divisions from 1978-79 to 1982-83, while Table 8 illustrates program monitoring expenditures over the same period.

Compliance with Part 116

Exhibit IV summarizes the status of State agencies' and political subdivisions' compliance with selected Part 116 standards as of March 1983. Four gradations are used to specify level of agency conformance to SED educational standards:

Compliance	-	Virtually all facilities conform to standards
General Compliance	-	Most facilities conform to standards
Typically out of Compliance	-	Most facilities do not conform to standards
Non-Compliance	-	Virtually all facilities do not conform to standards

Table 7

Professional and Non Professional Staff
Involved in Monitoring State Agency Compliance
to Parts 116 and 200

Type of Staff	Number of Staff by Fiscal Year				
	1978-79	1979-80	1980-81	1981-82	1982-83
Interagency Cooperation and Support Services					
Professional	5	11	13	14	14
Non-Professional	4	4	5	4	4
Total	9	15	18	18	18
Program Monitoring					
Professional	22	34	33	33	31
Non-Professional	10	10	10	14	15
Total	32	44	43	47	46

Source: Letter to LCER staff from SED, Assistant Commissioner, Office of Education of Children with Handicapping Conditions, April 6, 1983.

Table 8

State and Federal Expenditures for
Monitoring* State Agency Compliance
to Parts 116 and 200
(Thousands)

	1978-79	1979-80	1980-81	1981-82	1982-83
Part 116	--	$ 264.0	$ 391.2	$ 425.9	$ 468.5
Part 200					
Article 89	$ 880.0	1,496.1	1,548.8	1,756.9	1,815.5
4201 Schools	80.1	88.0	96.8	106.5	117.1
Deaf Infant Program	60.1	22.0	24.2	26.3	29.3
State Schools Deaf and Blind	40.1	66.0	72.6	78.3	87.9
Family Court Placement	--	44.0	48.4	106.5	117.2
Total	$1,080.3	$1,980.1	$2,181.0	$2,500.4	$2,635.5

*For purposes of this report, "monitoring" means all activities related to regulatory or enforcement functions, technical assistance, approval of student placements and reporting. It does not include activities related to State or federal grant administration, field audits, rate setting analysis, related accounting or bookeeping functions.

Source: Letters to LCER staff from SED, Director, Division of Program Development, June 7, 1983.

Exhibit IV

Agency Compliance to Part 116 Standards
March 1983

Agency	5 1/2 hr. School Day	180 School Days per Year	Equivalent Instruction to that Offered of Public Schools	Equivalent Physical Education to that Required of Public Schools	Appropriate Pupil Attendance and Academic Record Management	Equivalent Health Education to that Required of Public Schools
SED						
853 Schools	Compliance	Compliance	Compliance	Compliance	Compliance	General Compliance
4201-Schools	Compliance	Compliance	Compliance	Compliance	Compliance	Compliance
DSS						
Special Act	Compliance	Compliance	Compliance	Compliance	Compliance	Compliance
On Campus Schools	General Compliance	Compliance	Compliance	General Compliance	General Compliance	Compliance
DFY	General Compliance	Compliance	General Compliance	Non-Compliance	General Compliance	Typically out of Compliance
DOCS	Compliance	Compliance	General Compliance	Compliance	Compliance	Compliance
OMRDD	General Compliance	General Compliance	Not Applicable	Typically out of Compliance	Typically out of Compliance	Compliance
OMH	Typically out of Compliance	General Compliance	Not Applicable	Typically out of Compliance	General Compliance	General Compliance
Local Jail Rikers Island Only	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance	Not Mentioned	Non-Compliance
DFY Licensed Detention Centers Spofford Only	Non-Compliance	Compliance	Non-Compliance	Non-Compliance	Non-Compliance	Not Mentioned
DOH Helen Hayes	Compliance	Compliance	Compliance	Compliance	Compliance	Not Mentioned

Exhibit IV (Cont.)

Agency	Equivalent Safety Education to that Required of Public Schools	Diplomas and Certificates Issued in Accordance to State Law and Regulations	Health Services Equivalent to those Required of Public School	Occupational Education, if Provided Equivalent to that Required for Public Schools	All Professional Instructional Personnel have Required Certificates	Each Home or Facility Prepare Annual and Long Range Education Plans
SED						
853-Schools	Compliance	Compliance	Compliance	Compliance	Compliance	Compliance
4201-Schools	Compliance	Compliance	Compliance	Compliance	Compliance	Compliance
DSS						
Special Act	Compliance	Compliance	Compliance	Compliance	Compliance	Compliance
On Campus School	Compliance	General Compliance	Compliance	General Compliance	General Compliance	Compliance
DFY	Typically out of Compliance	Compliance	General Compliance	Compliance	General Compliance	Compliance
DOCS	Compliance	Compliance	Compliance	General Compliance	General Compliance	Non-Compliance
OMRDD	Compliance	Not Applicable	Compliance	Not Applicable	General Compliance	Non-Compliance
OMH	General Compliance	Not Applicable	Compliance	General Compliance	General Compliance	Non-Compliance
Local Jail Rikers Island Only	Non-Compliance	Compliance	Not Mentioned	Not Mentioned	Compliance	Not Mentioned
DFY Licensed Detention Centers Spofford only	Not Mentioned	Compliance	Not Mentioned	Not Mentioned	Non-Compliance	Non-Compliance
DOH						
Helen Hayes	Not Mentioned	Compliance	Compliance	Compliance	Compliance	Compliance

Exhibit IV (Cont.)

Agency	Each Facility Appoint a Committee to Perform COH Function to Include Appropriate Staff	Procedural Due Process to be Afforded Child and Parent	Chief Administrator of each Facility Exercise Duties of Board of Education	Special Classes, Resource Rooms and IEPs to be Provided	Educational Progress Report to be Provided to School District COH	Surrogate Parent to be Selected Where Child's Natural Parents are Unavailable or Child is Ward of the State
SED						
853-Schools	General Compliance	General Compliance	Compliance	Compliance	Compliance	General Compliance
4201-Schools	Not Applicable	General Compliance	Not Applicable	Compliance	Compliance	General Compliance
DSS						
Special Act	Compliance	Compliance	Not Applicable	Compliance	Compliance	General Compliance
On Campus Schools	Typically out of Compliance	Non-Compliance	Compliance	Typically out of Compliance	Typically out of Compliance	Non-Compliance
DFY	General Compliance	General Compliance	Typically out of Compliance	Compliance	Non-Compliance	General Compliance
DOCS	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance
OMRDD	General Compliance	Non-Compliance	Compliance	Not Applicable	General Compliance	Non-Compliance
OMH	General Compliance	General Compliance	Typically out of Compliance	General Compliance	Non-Compliance	Non-Compliance
Local Jail Rikers Island Only	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance
DFY Licensed Detention Centers Spofford only	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance	Non-Compliance
DOH						
Helen Hayes	Compliance	Compliance	Compliance	Compliance	Compliance	Compliance

Source: LCER staff from SED monitoring reports and interviews with DICSS staff.

In instances where only one agency facility has been reviewed (jails, detention centers), either compliance or noncompliance is indicated.

Excluding 853 and 4201 schools, the agencies generally were not in compliance with standards requiring:

--Chief administrator of facility to exercise duties of board of education,

--Reporting of educational progress, and

--Surrogate parents.

Mixed compliance was evident with respect to equivalent physical education; facility educational planning; facility committee to perform the COH function; due process procedures; and special classes, resource rooms and IEPs to be provided. The State agencies generally complied with: the 5 1/2 hour school day; 180 day school year; instruction equivalent to that offered in the public schools; pupil records' management; physical, health and safety education; health services; and diploma and certificate requirements.

Most serious compliance problems were in jails and detention centers. However, only one facility of each type was reviewed. DOCS had not appointed committees to perform the COH function; hence, that agency was not in compliance with most standards relating to serving inmates with handicapping conditions.

Practically all 853 schools, 4201 schools and special act school districts (serving a large number of foster care children), were in compliance with Part 116 standards. Campus schools on child care agency grounds typically were not in compliance with COH, due process, special education program, progress reporting and surrogate parent's requirements. All, however, had been approved for continued 853 school funding of programs for handicapped children. As mentioned in the previous chapter, SED had not monitored the educational programs provided to children under the care of DAAA and DSAS treatment centers and DOH nursing homes.

During the agency response process four of the State agencies reviewed, disagreed with or had comments on several of the SED compliance ratings reflected in Exhibit IV.

DFY officials believed that the term "partial compliance" would more appropriately represent that agency's conformance to equivalent physical and safety education and special classes, resource rooms and IEPs standards.

DOCS commented on several of the ratings and its efforts to comply with the Part 116 standards:

> The series of meetings between DOCS and SED staff mentioned previously have resulted in general agreement on the most significant issues. SED staff agree completely that the educational programs provided by the DOCS are, of necessity, not the same as those offered in the public schools. Both groups agree that DOCS should attempt to conform to these standards as completely as possible within the security and programmatic constraints present within DOCS. In an effort to fully present these constraints and to define how DOCS could most appropriately conform within the SED standards, a draft Memorandum of Agreement was prepared by DOCS staff, reviewed and

revised by SED staff and is currently being reviewed by DOCS staff. A meeting between the appropriate staffs of these two agencies has been scheduled for the end of August 1983 and it is expected that the Memorandum (see attached draft) can be finalized at that point. When that is done and the agreement signed by both commissioners, DOCS staff will immediately begin to implement the terms of the agreement.

OMH took issue with several of the SED compliance ratings arguing that they were not reflective of March 1983 status. The office believed that it fully complied with requirements for the 5 1/2 hour school day and the 180 day school year, and generally complied with the requirement for equivalent physical education. OMH writes:

> With regard to the issues of annual and long-range facility planning, COH due process and surrogate parent standards, OMH had taken significant steps to address these areas. The Office issued in June of 1982, for implementation by OMH facilities, inpatient education requirements which include the areas listed above. OMH has conducted ongoing monitoring of facilities to bring programs into compliance with these requirements. As well, the Office, in conjunction with SED, has planned an extensive inservice training program for facility staff around these education requirements. It is the goal of OMH to bring each facility into compliance with these requirements during FY 1983-84. It is important to note that there is a legal issue relating to confidentiality requirements and the recruitment of surrogate parents for OMH inpatients which is currently being studied by the OMH Office of Counsel.

OMRDD disagreed with several of the SED compliance ratings, arguing that the agency was fully compliant with Part 116 requirements for appointment of a facility committee to perform the COH function, certification of all instructional, personnel and appropriate pupil attendance and academic records management. SED's criteria were viewed as inappropriate for judging OMRDD's compliance with equivalent physical education and unclear for judging compliance with facility annual and long range plans. OMRDD indicated that new procedures were being developed to comply with educational progress reporting, due process and surrogate parent standards.

SED Monitoring Effectiveness

It is apparent that the effectiveness of SED's compliance monitoring depends upon SED's influence on program funding. For example, SED authority to approve 853 schools and special act school district programs for children with handicapping conditions means that SED can encourage such schools to move towards compliance. SED has removed 12 of the 853 schools from the approved list for noncompliance with standards.

Conversely, schools on the grounds of State agencies are funded by agency budgets. Since SED has no direct control over funding, there is no fiscal incentive to bring these programs into compliance, unless the Division of the Budget supports SED's program recommendations. As a result, SED officials indicated to LCER staff that efforts are directed to develop interagency agreements with each of the agencies monitored. The process has been protracted with some of the interagency agreements requiring months of negotiation. To date, interagency agreements have been drafted with DOCS, DFY, and OMH but none has been signed.

SED monitoring of educational programs and services extends to children placed in State operated or supported schools, child care institution's operating schools, and public and private school programs for children with handicapping conditions. Monitoring involves reviewing the instructional programs provided, the qualifications of personnel, and the conformance to other SED requirements. Typically case files (IEPs) are sampled to assure that children are receiving appropriate educational programs and services.

This level of SED program oversight is not available for educational programs and services for the vast majority of children in State agency full-time residential care who are not handicapped but are educated in school district or BOCES programs. Both SED and agency officials indicated to LCER staff that these children were under school district educational supervision and that the monitoring of their educational progress was a school district responsibility.* No State agency, however, was reviewing the adequacy and fulfillment of this local school district function.

Chapter Summary

- Six State agencies provided direct educational services to 6,045 children in full-time residential care as of December 1982. Estimated 1981-82 expenditures for direct educational services were about $39 million.

- Four State agencies provided indirect educational service to about 8,000 children in full-time residential care. Excluding Family Court placements, this indirect educational program expenditure was about $22.9 million in 1981-82.

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*In responding to LCER's preliminary and confidential draft of this report SED took issue with this section of the report: "There is a concern over the report's interpretation of section 112 of Education Law as it relates to the State Education Department's responsibilities for nonhandicapped children in foster care. The report indicates that the Department is responsible for overseeing the educational programs of all children in full-time residential care and that these responsibilities extend to monitoring the educational programs and individual progress of nonhandicapped children in foster care attending school districts. The Department considers this position a misinterpretation of SED's responsibilities under section 112. Section 112 states that the Department shall establish and enforce standards of instruction for educational services and programs as opposed to the report's implication that these responsibilities extend to individual performance-based monitoring responsibilities for this class of children. Part 116 of the Commissioner's Regulations, the interpreting regulations for Section 112, reinforces the Department's position by specifically stating that it applies only to programs provided for youth who do not attend public schools. Based on these considerations, the Department believes that its responsibilities for nonhandicapped foster care youth who attend public schools are the same as they are for all nonhandicapped youth. The Department assures that all programs and services provided by school districts are in compliance with legislative and regulatory mandates. Schools which meet these requirements are considered to be providing appropriate programs for youth in the community, regardless of their resident status, with monitoring of individual performance being considered a function of the local school district and person in parental relationship. Therefore, if individual progress of nonhandicapped youth in foster care is to be monitored, we would recommend that it would more appropriately be a function of the State agency acting in the parent role for the individual (e.g., DSS)."

- Four State agencies responsible for licensing and inspecting local detention, jail, drug and alcohol treatment, and nursing home facilities did not examine educational services to children in care.

- The complex financing of education for children under care involves incentives, disincentives and fiscal impacts which can affect the placement decision. It is likely that such decisions may not be based solely on programmatic or educational considerations.

- SED has responsibility to review State agency compliance with Part 116 standards, but the department is unable to enforce the upgrading of educational services. Though SED has worked with agencies to develop interagency agreements, none was signed as of March 1983.

- SED monitoring and oversight applies to children (1) with handicapping conditions, (2) in agency direct educational programs, and (3) in child care agencies with schools. This monitoring and oversight does not apply to nonhandicapped children in full-time residential care, placed in local school district or BOCES programs. This double standard seems inconsistent with the requirements of Section 112, Education Law.

FOOTNOTES

I. Introduction

1. Edward Eldefonso and Walter Hartenger, Control, Treatment and Rehabilitation of the Juvenile Offender, "Characteristics of the Juvenile Offender" (Beverly Hills: Glencoe Press, 1976), pp 80-81; Noel Dunivant, "The Relationship between Learning Disabilities and Juvenile Delinquency, Brief Summary of Research Findings" (Williamsburg, Va: National Center for State Courts, June 1982) pp. 1-3.
2. Eveoleen Rexford as quoted in Garry D. Brewer, James S. Kakalik, Handicapped Children (New York: McGraw-Hill Book Company, 1979) p. 454.
3. Allan Cott, "The Etiology of Learning Disabilities, Drug Abuse and Juvenile Delinquency," in Ecologic Biochemical Approaches to Treatment of Delinquents and Criminals, Leonard Hippchen, Ph.D., ed. (New York: Van Nostrand Reinhold Company, 1974), p 62.
4. Ibid., pp. 71-73.
5. Letter to LCER staff from SED Assistant Counsel, January 28, 1983.
6. Laws of 1976, Chapter 853, Section 1.
7. Ibid., and Education Law, Section 4401 (1).
8. Education Law, Section 4001 (2).
9. Mental Hygiene Law, Section 33.11; Education Law, Section 3202 (5) (c).
10. Education Law, Section 4002 (1).
11. Ibid., Section 3202 (7).
12. Ibid., Section 3202 (7a).
13. Ibid., Section 112.
14. Ibid.
15. Ibid., Sections 3202 (1), 3207.

II. Education Programs Supervised by the State Education Department

1. Education Law, Section 4403.
2. NYS Comptroller's Office, Audit of Office of Children with Handicapping Conditions (draft), July 1982.
3. Laws of 1980, Chapter 563, Section 8.
4. Education Law, Section 4401.
5. 8 NYCRR, 200.7 (d) (1) (ii).

III. State Agency Education Programs

1. Social Services Law, Section 20.
2. Ibid., Section 371 (10).
3. Ibid., Section 392.
4. Family Court Act, Sections 756, 1055.
5. Social Services Law, Section 384.
6. Education Law, Section 3202.
7. Ibid., Section 3202 (4).
8. Ibid., Sections 4004, 4005.
9. DSS data submission to LCER, March 17, 1983.
10. DFY, Policy Manual (Draft), Item 3273.1, p. 1.
11. Family Court Act, Sections 712, 756, 758 (a).
12. Penal Law, Article 10, Section 70.05; Executive Law, Section 515-b.
13. Criminal Procedure Law, Section 720.20.

14. DFY, data submission to LCER, staff March 17, 1983.
15. DFY, Title I grant application, 1982-83, p.1.
16. Cathe McCall Hochenberry, Education of the Adjudicated Handicapped Youth: Policy Issues and Impression, (Reston, VA: Council for Exceptional Children, 1980), pp. 6-7.
17. SED, Office for Education of Children with Handicapping Condition, Final Agency Review Report-Division for Youth (November 1981), p. 12; See also LCER, Management of Youth Rehabilitation Programs (October 1982), p. 21.
18. DFY, Office of Educational Services, Policy Manual (draft), 3272.6, 3273.7.
19. Correction Law, Section 136.
20. DOCS, Annual Report of the Academic Education Program, p. 4, Appendix B.
21. Ibid., p. 1.
22. DOCS, Final DCJS Project Report-Occupational Training II, May 18, 1982, pp. 3-10.
23. Mental Hygiene Law, Section 1.03 (21,22)
24. Ibid., Sections 15.27-15.35.
25. Ibid., Section 33.11.
26. Ibid., Section 1.03 (20).
27. Ibid., Sections 9.13-9.37.
28. Letter to LCER staff from OMH, Acting Director, Bureau of Children and Youth, March 17, 1983.
29. Mental Hygiene Law, Section 33.11
30. Correction Law, Section 500-c.
31. See General Accounting Office, Learning Disabilities: The Link to Delinquency Should be Determined, But Schools Should Do More Now; p.2; Cathe McCall Hochenberry, Education of the Adjudicated Handicapped Youth: Policy Issues and Impression (Reston, VA: Council for Exceptional Children, 1980), pp. 6-7.
32. Grant Applications: "Educational Services for Handicapped Youth in Detention Center and Jail," Oneida, Herkimer, and Madison County BOCES, p. 1, "Services for Jailed Youth," BOCES #1, Monroe County, p.1; see also, Division for Youth, 1980-81 Title I, ESEA grant application, p.9.
33. Capital District Regional Planning Commission, Information provided to LCER staff, March 1983.
34. NYS Commission of Correction, Program and Policy Analysis, A Profile of Educational Programs in Local Correctional Facilities in New York State, June 1981, p.2.
35. Education Law, Section 3202 (1-a).
36. Ibid., Section 3202 (7).
37. Ibid., Section 3207.
38. Ibid., Section 3202 (7).
39. Correction Law, Section 45 (2, 3, 6).
40. 9 NYCRR 7103.1.
41. N. 34, generally.
42. DFY, Detention Services Information, (Albany: Division for Youth, 1981), p.2.
43. County Law, Section 218-a (A).
44. Executive Law, Section 510-a.
45. Education Law, Section 3202 (7).
46. 9 NYCRR 180.8 (g), 180.9 (a, c-21), 180.10 (a-xiv-c, b-xvii-e).
47. Public Health Law, Section 2600.
48. Education Law, Section 3202 (7).
49. 14 NYCRR 84.6, 86.6.
50. Education Law, Section 3202 (7).
51. Letter to LCER Director from Acting First Deputy Director, Division of Substance Abuse Services, August 5, 1983.

APPENDIX A
LIST OF INTERVIEWS AND CONTACTS

State Education Department

Office of Education of Children with Handicapping Conditions - Assistant Commissioner; Research Assistant; Division of Interagency Support Services-Director, Supervisor Associates (7); Division of Program Monitoring-Director; Division of Program Development-Director.
Office of Educational Finance and Management Services-Assistant Commissioner, Associate (2).
Office of the Counsel-Assistant Counsel.
Office for Policy Analysis-Information Center Associate for Educational Data Systems.

Office of the Comptroller

Bureau of Field Audit-Chief Auditor, Associate State Accounts Auditor.

Department of Social Services

Office of Audit and Quality Control-Principal Management Specialists (2); Senior Management Specialist.
Division of Family and Child Services-Director of Program Assistance.
Division of Services, Resource Management-Senior Planning Specialist; Director of Service Information.
Welfare Management System-Team Implementation Supervisor.

Division for Youth

Deputy Director for Program Services; Acting Director of Education; Title I Coordinator Director; Youth Facility Services.

Commission of Correction

Assistant Director of Operations.

Department of Correctional Services

Deputy Commissioner for Program Services; Director of Education; Assistant Director of Education; Title I Coordinator.

Office of Mental Health

Bureau of Children and Youth-Acting Director; Program Specialist; Title I Coordinator; Assistant Education Coordinator.

Office of Mental Retardation and Developmental Disabilities

Associate Commissioner; Director of Education; Education Program Coordinator.

Division of Substance Abuse Services

First Deputy Director; Director, Phoenix House.

Division of Alcoholism and Alcohol Abuse

Bureau of Prevention Education and Training; Assistant Director.

Department of Health

Commissioner; Helen Hayes Hospital-Medical Director; Education Director.

APPENDIX B

STATISTICAL TABLES

Table B-1

Placements of Children Under SED Supervision
by Type of Handicapping Condition
February 1983

Condition	853 Schools		Special Act School Districts	4201 Schools State Operated		State Supported		Total	Percent
	In-State	Out-of State		Batavia	Rome	Human Resources	Other State Supported		
Educable Mentally Retarded	490	45	--	--	--	--	--	535	5.0
Trainable Mentally Retarded	1,467	123	--	--	--	--	--	1,590	14.8
Emotionally Disturbed	2,966	247	289	--	--	--	--	3,502	32.7
Speech Impaired	20	2	--	--	--	--	--	22	0.2
Deaf	28	3	--	--	187	--	1,709	1,927	18.0
Hard of Hearing	8	--	--	--	--	--	--	8	0.1
Blind	20	13	--	93	--	--	236	362	3.4
Physically Handicapped	11	1	--	--	--	148	--	160	1.5
Orthopedically Handicapped	301	3	--	--	--	--	--	304	2.8
Other Health Impared	16	--	--	--	--	--	--	16	0.2
Autistic	88	23	--	--	--	--	--	111	1.0
Learning Disabled	585	16	--	--	--	--	--	601	5.6
Multiply Handicapped	1,291	118	23	2	6	70	30	1,540	14.4
Unknown	35	--	--	--	--	--	--	35	0.3
Total	7,326	594	312	95	193	218	1,975	10,713	
Percent	68.4	5.5	2.9	1.0	1.8	2.0	18.4	100	100

Source: SED Information Center on Education, March 1983.

Table B-2

Sex and Age of the Foster Care Population,
1978 through 1982
New York City, Upstate, Total State
As of December 31, 1982

	1978	1979	1980	1981	1982	Four Year Percent Increase (Decrease)
NYC						
SEX						
Male	15,459	14,386	13,647	12,686	11,750	(24.0)
Female	11,399	10,605	10,158	9,722	9,073	(20.4)
Not Reported	114	73	61	41	26	(77.2)
Total[a]	26,972	25,064	23,866	22,449	20,849	(22.7)
AGE						
Under 6	5,078	4,848	4,855	4,934	4,880	(3.9)
6-13	10,501	9,316	8,330	7,628	6,961	(33.7)
14-17	8,817	8,289	7,963	7,382	6,646	(24.6)
Over 17	2,576	2,611	2,718	2,505	2,362	(8.3)
Total[a]	26,972	25,064	23,866	22,449	20,849	(22.7)
UPSTATE						
SEX						
Male	8,995	9,018	8,645	Not	7,032	(21.8)
Female	7,762	7,479	7,182	Available	5,800	(25.3)
Not Reported	22	65	25		143	550.0
Total[a]	16,779	16,562	15,852	14,437	12,975	(22.7)
AGE						
Under 6	3,550	3,388	3,289	Not	2,191	(38.3)
6-13	6,458	5,914	5,422	Available	3,987	(38.3)
14-17	5,745	6,216	5,986		4,717	(17.9)
Over 17	1,026	1,044	1,155		1,937	88.8
Total[a]	16,779	16,562	15,852	14,437	12,832[b]	(23.5)
STATE						
SEX						
Male	24,454	23,404	22,292	Not	18,782	(23.2)
Female	19,161	18,084	17,340	Available	14,873	(22.4)
Not Reported	136	138	86		169	24.3
Total[a]	43,751	41,626	39,718	36,886	33,824	(22.7)
AGE						
Under 6	8,628	8,236	8,144	Not	7,071	(18.0)
6-13	16,959	15,230	13,752	Available	10,948	(35.4)
14-17	14,562	14,505	13,949		11,363	(22.0)
Over 17	3,602	3,655	3,873		4,299	19.4
Total[a]	43,751	41,626	39,718	36,886	33,681[b]	(23.0)

[a]See note C, Table B-3.
[b]Exludes 143 children temporarily absent from care.

Source: LCER staff from DSS data submission, March 15, 1983.

Table B-3

Number of Children in Foster Care by
Type of Placement, New York City, Upstate and
Total State 1978 through 1982
(December 31)

Type of Care	Children in Foster Care					Four Year Percent Increase (Decrease)
	1978	1979	1980	1981	1982	
New York City						
Institution[a]	6,080	5,227	4,824	4,248	3,427	(43.6)
Group Residence	482	445	500	532	560	16.2
AOBH	300	263	307	293	317	5.7
Group Home	2,527	2,507	2,446	2,327	2,207	(12.7)
Foster Home[b]	17,359	16,509	15,713	14,989	14,243	(18.0)
Other/Unknown	224	113	76	60	95	(57.6)
Total	26,972[c]	25,064[c]	23,866[c]	22,449[c]	20,849[c]	(22.7)
Upstate						
Institution[a]	2,150	2,477	2,510	Not	2,123	(1.3)
Group Residence	78	76	77	Available	198	153.8
AOBH	98	168	179		224	128.6
Group Home	328	500	487		565	72.3
Foster Home	13,911	13,127	12,403		9,781	(29.7)
Other/Unknown	214	214	196		84	(60.7)
Total	16,779[c]	16,562[c]	15,852[c]	14,437[c]	12,975[c]	(22.7)
State						
Institution[a]	8,230	7,704	7,334	Not	5,550	(32.6)
Group Residence	560	521	577	Available	758	35.4
AOBH	398	431	486		541	35.9
Group Home	2,855	3,007	2,933		2,772	(2.9)
Foster Home	31,270	29,636	28,116		24,024	(23.2)
Other/Unknown	438	327	272		179	(59.1)
Total	43,751[c]	41,626[c]	39,716[c]	36,886[c]	33,824[c]	(22.7)

Note: AOBH = Agency Operated Boarding Home.

[a]Includes children in shelters.
[b]Includes children in adoptive homes.
[c]May include a small number of children in DFY custody. For example in 1982, approximately 200 DFY children were included in the New York City count.

Source: LCER staff from DSS data submission, March 15, 1983.

Table B-4

Sex, Age and Prevalence of Handicapping Condition
of Children in Division for Youth Custody
1978 through 1982

	As of December 31					Four Year Percent Increase (Decrease)
	1978	1979	1980	1981	1982	
Sex						
Male	3,494	3,051	3,323	3,495	3,380	(3.3)
Female	1,220	1,012	1,050	969	629	(48.4)
Total	4,714	4,063	4,373	4,464	4,009	(15.0)
Age						
5-12	80	110	114	64	54	(32.5)
13-16	2,549	2,470	2,606	2,631	2,661	4.4
17-21	2,085	1,483	1,653	1,769	1,294	(37.9)
Total	4,714	4,063	4,373	4,464	4,009	(15.0)
Suspected Handicapping Condition	As of December 1					
Mentally Retarded	60	263	92	164	113	88.3
Hard of Hearing	21	7	10	10	10	(52.4)
Deaf	1	--	--	--	--	(100.0)
Speech Impaired	11	11	13	20	13	18.2
Visually Handicapped	185	10	13	13	15	a
Seriously Emotionally Disturbed	185	175	380	685	718	288.1
Orthopedically Impaired	--	1	3	5	2	--
Other Health Impaired	--	--	--	2	4	--
Specific Learning Disabled	306	278	240	412	377	23.2
Deaf-Blind	--	--	--	--	--	
Multiply Handicapped	--	--	--	--	34	--
Total Suspected	769	745	751	1,311	1,286	67.2
Actual Prevalence of Handicapping Condition						
Number	N/A	N/A	N/A	552	739	
Percent[b]	--	--	--	32.5	38.2	

[a] Decrease not meaningful.
[b] Based upon population, levels I to VI.

Source: LCER staff from DFY data submission, March 17, 1983.

Table B-5

Number of Children in
Division for Youth Custody
by Security Level
1978 through 1982

Security Level	As of December 31					Four Year Percent Increase (Decrease)
	1978	1979	1980	1981	1982	
Secure I	213	238	256	367	551	158.7
Non Community Based (II to IV)	712	781	821	883	931	30.8
Community Based (V to VI)	501	455	441	451	454	(9.4)
Foster Care (VII)	377	320	322	325	281	(25.5)
After Care (VIII)	2,719	1,953	2,097	1,925	1,219	(55.2)
Private Voluntary Cooperative (X)	192	316	436	513	573	198.4
Total	4,714	4,063	4,373	4,464	4,009	(15.0)

Source: LCER staff from DFY data submission, March 17, 1983.

Table B-6

Sex and Handicapping Condition
Inmates 16-21 Years of Age
Department of Correctional Services
1978 through 1982

Category	As of December 31 1978	1979	1980	1981	1982
I. Sex					
Male	1,838	2,005	2,039	2,558	No
Female	29	34	37	61	Data
Total	1,867	2,039	2,076	2,619	3,500*
II. Educational Handicapped					
Learning Disabled	N/A	N/A	N/A	N/A	19
Emotionally Disturbed	N/A	N/A	N/A	N/A	19
Speech Impaired	N/A	N/A	N/A	N/A	3
Other Health Impaired	N/A	N/A	N/A	N/A	--
Mentally Retarded	N/A	N/A	N/A	N/A	78
Orthopedically Impaired	N/A	N/A	N/A	N/A	4
Multiple Handicapped	N/A	N/A	N/A	N/A	19
Deaf	N/A	N/A	N/A	N/A	2
Hard of Hearing	N/A	N/A	N/A	N/A	--
Blind	N/A	N/A	N/A	N/A	--
Visually Impaired	N/A	N/A	N/A	N/A	6
Autistic	N/A	N/A	N/A	N/A	--
Total					150

Note: N/A = Not Available.

*Estimated by DOCS.

Source: LCER staff from DOCS data submission, March 8, 1983.

Table B-7

Sex and Age of Children
Educated in Developmental
Center Programs
1978 through 1982

	As of December 31					Four Year Percent Decrease
	1978	1979	1980	1981	1982	
Sex						
Male	1,743	1,397	1,041	791	541	69.0
Female	1,115	932	724	572	408	63.4
Total	2,858	2,329	1,765	1,363	949	66.8
Age						
5 & Under	--	33	28	22	14	--
6 - 12	--	344	262	195	122	--
13 - 17	--	834	625	480	351	--
18 - 21	--	1,118	850	666	462	--
Total	--	2,329	1,765	1,363	949	--

Source: LCER staff from OMRDD data submission, March 14, 1983.

Table B-8

Children in OMRDD Placement by
Educational/Habilitation Program
1978 through 1982

	As of December 31					Four Year Percent Increase (Decrease)
	1978	1979	1980	1981	1982	
Resident at Developmental Center (DC)						
In DC Program	2,858	2,329	1,765	1,363	949	(66.8)
In Community Program						
School district or BOCES	N/A	448	558	595	588	--
Private school[a]	N/A	182	167	138	98	--
Subtotal	451	630	725	733	686	52.1
Not in Education Program	371	37[b]	18[b]	22[b]	23[b]	(93.8)
Subtotal	3,680	2,996	2,508	2,118	1,658	(54.9)
Resident in Community						
Family Care	910	858	827	739	689	(24.3)
Community Residence	N/A	N/A	N/A	N/A	331	
Intermediate Care Facility (ICF)	--	--	--	--	824	
Attending DC Program	50	37	33	15	8	(84.0)
Subtotal	N/A	N/A	N/A	N/A	1,852	
Grand Total	N/A	N/A	N/A	N/A	3,510	

[a] Children live in DCs but attend school in the community.
[b] All children medically exempt from educational program.

Source: LCER staff from OMRDD data submission, March 14 and May 4, 1983.

Table B-9

Sex, Age, Type of Handicap
for Children in Psychiatric
Center Programs
1978 through 1982

	As of March 31					Percent Increase (Decrease)
	1978	1979	1980	1981	1982	
Sex						
Male	944	919	831	801	788	(16.5)
Female	463	426	414	360	398	(14.0)
Total	1,407	1,345	1,245	1,161	1,186	(15.7)
Age						
Less than 13	224	226	182	168	189	(15.6)
13 - 15	390	326	304	265	282	(27.7)
16 - 20	793	793	759	728	715	(9.8)
Total	1,407	1,345	1,245	1,161	1,186	(15.7)
Type of* Handicapping Condition						
Emotionally Disturbed	N/A	N/A	N/A	N/A	639	--
Autistic	N/A	N/A	N/A	N/A	55	--
Alcohol/Substance Abuse	N/A	N/A	N/A	N/A	10	--
Unknown Unreported	N/A	N/A	N/A	N/A	77	--
Total*	N/A	N/A	N/A	N/A	781	--

*All children under OMH are handicapped, but some children over 18 are recorded as adult and not represented in this presentation.

Source: LCER staff from OMH data submission, March 29, 1983.

Table B-10

Admissions to
Alcoholism Treatment Centers
Under Age 21
Fiscal Year 1981-82

Alcoholism Treatment Center	15 to 17	18 to 20	Youngest
Bronx	0	2	20
Creedmoor	1	7	17
Kingsboro	0	0	--
Manhattan	0	3	19
Marcy	2	14	17
Middletown	0	12	18
Rochester	4	18	15
Central Islip	0	9	19
Rockland	0	7	Not given
St. Lawrence	2	9	17
South Beach	1	2	17
Buffalo	3	16	16
Willard	1	22	16
Total	14	121	

Source: *Statistical Summary for Inpatients at State Operated Alcoholism Services FY 1981-82. Prepared by DAAA, Bureau of Evaluation and Information Services, March 1, 1983.*

Table B-11

State Agency Estimated Expenditures for Educational Services to Children in Care or Custody

	State Fiscal Year (unless otherwise noted)					
	1977-78	1978-79	1979-80	1980-81	1981-82	1982-83
DSS						
State Purposes[a]	--	--	--	$10,405,000	$11,410,000	$18,005,000
Local DSS	--	--	--	10,405,000	11,410,000	18,005,000
Federal						
Income Maintenance	--	--	--	9,855,000	10,845,000	--
Total	--	--	--	$30,665,000	$33,665,000	$36,010,000
DFY						
State Purposes[a]	N/A	$ 2,260,642	$ 2,952,122	$ 3,813,459	$ 3,940,432	--
Federal[a]						
PL 94-142	--	--	131,680	101,278	N/A	--
ECIA (N & D)	1,536,365	1,549,160	1,899,252	1,744,835	1,908,085	--
VEA	--	--	--	110,000	226,722	--
Other	3,186	4,089	59,722	68,595	58,579	--
Subtotal	$ 1,539,551	$ 1,553,249	$ 2,090,654	$ 2,024,708	$ 2,193,386	--
Total	--	$ 3,813,891	$ 5,042,776	$ 5,838,167	$ 6,133,818	--
DOCS						
State Purposes	N/A	N/A	N/A	N/A	$ 2,935,800	$ 3,557,823
Federal						
PL 94-142	--	--	--	--	--	--
ECIA (N & D)	$ 863,890	$ 1,120,018	$ 1,325,000	$ 1,550,000	1,750,000	2,024,438[b]
Total	--	--	--	--	$ 4,685,800	$ 5,582,261
OMRDD[c,d]						
State Purposes[c]	$13,480,900[e]	$13,108,300[e]	$13,810,500[e]	$12,574,200[e]	N/A	N/A
Contracts	--	--	511,120	421,919	$ 497,560	$ 572,671
Federal[c]						
PL 94-142	--	--	--	--	--	--
ECIA (HCP)	3,614,806	3,443,851	1,939,886	1,498,788	1,148,611	--
Total	--	--	$16,261,506	$14,494,907	--	--
OMH						
State Purposes	$ 5,050,618	$ 5,035,983	$ 5,541,540	$ 5,922,243	$ 7,229,466	--
Federal[f]						
ECIA (HCP)	951,944	938,300	918,617	825,504	757,922	--
Total	$ 6,002,562	$ 5,974,283	$ 6,460,157	$ 6,747,747	$ 7,987,388	--
DOH						
State Purposes	$ 5,141	$ 7,587	$ 8,000	$ 10,325	$ 9,500	$ 13,800
Federal[b]						
ECIA (HCP)	--	28,842	22,478	21,955	10,955	13,860
Total	--	$ 36,429	$ 30,478	$ 32,280	$ 20,455	$ 27,660

Note: Financial data may represent different fiscal years.
ECIA - Education Consolidation and Improvement Act, Chapter I; N & D = Neglected and Delinquent Children Program; HCP = Handicapped Children Program; and PL 94-142 = Education of All Handicapped Children Act.

[a] Federal fiscal year, ending September 30.
[b] SED reported grant award for school year.
[c] Developmental Centers only, school year data.
[d] Includes fringe benefits.
[e] One half of this amount is federally reimbursed under medicaid.
[f] July 1 - June 30 year.

Source: LCER from agency data submissions.

APPENDIX C

Agency Responses

Commissioner of Education

Director, Division for Youth

Deputy Commissioner, Department of Correctional Services

Chairman, Commission of Correction

Commissioner, Officer of Mental Retardation and Developmental Disabilities

Commissioner, Office of Mental Health

Acting Director, Division of Alcoholism and Alcohol Abuse

Commissioner of Health

Acting First Deputy Director, Division of Substance Abuse Services

The official Department of Social Services response to this audit is not included in this Appendix because it was not forwarded to LCER in time to meet our printing deadline. It is LCER's opinion that DSS officials had ample time to do so because several extensions of the statutory 30 day response period were granted by LCER to accommodate DSS officials.

The responses of the nine agencies that were able to meet LCER's printing deadline follow.

Due to the number of agency response letters and attachments, some responses have been edited to remove statements no longer relevant because of text revisions by LCER staff. The complete responses are available for inspection at the Commission's office. Page number references in the agency responses have been adjusted to coincide with this final report.

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
OFFICE OF THE PRESIDENT OF THE UNIVERSITY
AND COMMISSIONER OF EDUCATION
ALBANY, NEW YORK 12234

October 21, 1983

Dear Mr. Russell:

Thank you for sharing with me copies of the revised Preliminary and Confidential draft LCER program audit, "Education of Children Under State Care or Custody." My staff has reviewed the report and attached is a response which makes suggestions regarding areas we feel will need revision or clarification.

I would like to thank you for having incorporated many of our comments within this revised draft. I trust that the information contained in the attachment will clarify the Department's position in these areas and assist you in the refinement of this draft into a final documentation. If you have any specific questions regarding the comments, please contact Lawrence Gloeckler at 474-5548 for further information.

I look forward to receiving the final report on this very important subject.

Sincerely,

Gordon M. Ambach

Mr. Sanford E. Russell
Director
Legislative Commission
on Expenditure Review
111 Washington Avenue
Albany, New York 12210

Attachment

New York State Education Department Response to
"Education of Children Under State Care and Custody"

Page 16:
The report fails to mention that parents may apply directly to the Commissioner for placement in a State operated/supported school without the recommendation of the COH.

Page 36:
"...children in an OMR/DD developmental center are mentally retarded" - should be changed to read, "mentally retarded and developmentally disabled" to coincide with the definition used on page 34.

Pages 44-45
The information regarding school district responsibilities for youth in local detention facilities is inaccurate. It is the position of the Department that the provisions of Education Law Section 3202.7 do not extend to youth in local detention facilities.

Page 49:
The bullet related to detention should not indicate school district responsibility for youth in these facilities.

Page 56, Exhibit III:
The responsibility for tuition under the detention facilities should indicate county and DFY responsibility, not the school district of residence pursuant to Section 3202.7.

Pages 58-59, Other Placement:
References to DFY licensed detention facilities should not be included in this paragraph.

Summary Comments:
An area of continuing concern relates to the report's interpretation of Section 112 of the Education Law. As previously indicated, the Department does not view the responsibilities under this law to include individual child reviews when those children are attending the local public school and receiving the same education as any youth. The statement of Page 24 that DSS does not review or monitor the educational progress of foster care chidren, but views this function as the responsibility of the local social services districts to be carried out through the social worker case menagement and utilization review, seems to indicate the appropriateness of the agency in parental relationnship being better able to monitor the progress made by individual nonhandicapped foster care youth. It would seem an appropriate function of the State Department of Social Services to assure monitoring of the educational performance and degree of educational progress of foster care youth when they review the necessity and the appropriateness of care and the effectiveness of case management.

This response included several additional suggestions and clarifications which have been incorporated into the audit text. These items have been deleted from this reproduction to avoid redundancy. The complete copy of the Commissioner's response is available for inspection at LCER offices.

LEONARD G. DUNSTON
DIRECTOR

NEW YORK STATE EXECUTIVE DEPARTMENT
DIVISION FOR YOUTH
84 HOLLAND AVENUE
ALBANY, NEW YORK 12208

October 13, 1983

Mr. Sanford Russell
Director
Legislative Commission
on Expenditure Review
111 Washington Avenue
Albany, NY 11210

Dear Mr. Russell:

Thank you for your correspondence of September 30, 1983. We have reviewed the final draft of the Legislative Commission on Expenditure Review's preliminary and confidential draft program audit - "Education of Children Under State Care or Custody." We are pleased that you have included the recommendations we suggested after review of the initial draft. We are in general agreement with the substance and content of this document.

We look forward to working with you in the future on this and other joint projects. Thank you, again, for the opportunity to respond.

Sincerely,

Leonard G. Dunston

Leonard G. Dunston

STATE OF NEW YORK

DEPARTMENT OF CORRECTIONAL SERVICES

THE STATE OFFICE BUILDING CAMPUS

ALBANY, N.Y. 12226

THOMAS A. COUGHLIN III

COMMISSIONER

MARION L. BORUM

DEPUTY COMMISSIONER
PROGRAM SERVICES

September 7, 1983

Mr. Sanford Russell
Director
Legislative Commission on
Expenditure Review
111 Washington Avenue
Albany, New York 12210

ATTENTION Mr. James Haag

Dear Mr. Russell:

As you requested, attached is our response to the "Youths in DOCS' Custody" section of the draft LCER program audit "Education of Children Under State Care or Custody."

Although our staff has not had occasion to meet with LCER staff prior to the formulation of the attached response, we feel that the review done by the LCER team was thorough and did, indeed, point out to us problem areas which we have been attempting to correct over some period of time.

We are certain that when our meetings with the State Education Department are concluded, all areas where there has been suggested non-compliance will be brought into compliance.

Sincerely,

Marion L. Borum
Deputy Commissioner

MLB/rm
cc: Thomas A. Coughlin III, Commissioner
Russell DiBello, Deputy Commissioner

Attachment

RESPONSE TO L.C.E.R.

Following are responses to the sections of the L.C.E.R. Report which relates to youths in Department of Correctional Services' custody.

1. p. 31 - "DOCS has not developed the capability to measure progress toward this statutory objective."*

All of our programs (especially literacy, ESL, GED, and Vocational Education) have been developed and implemented to measure progress toward our objective to provide inmates with programs "most likely to further the process of socialization and rehabilitation."

We have decided that this process would best be served by making sure each inmate has the opportunity to learn to read and/or speak English, to obtain a high school diploma, to gain entry level job skills, to get a college degree or to learn the life skills needed to cope on the outside.

Therefore, since we do measure all of these things, we believe the statement is inaccurate.

The following presents the results of our measurement of these areas during the period April 1, 1982 - March 31, 1983:

1.	Literacy	- 1,670 inmates reached the 5.0 literacy level
2.	English-as-a-Second Language	- 433 Spanish-speaking inmates reached the fluency level in spoken English
3.	High School Diploma	- 2,637 inmates received their GED diploma
4.	College	- 189 inmates received one year certificates from local colleges and/or universities; 226 were awarded A.A. degrees; and 45 received B.A./B.S. degrees
5.	Occupational Training	- 1,524 different inmates were trained in a total of 3,078 job titles (as defined by the Dictionary of Occupational Titles)

*Statement removed from this published report.

2. p. 31 - Lack of COH at Reception Centers

In a series of meetings over the last 12-18 months SED staff and DOCS, Division of Education staff have agreed that it will be appropriate and necessary to have a COH at each Reception Center to "review all students suspected of having a handicapping condition and for the recommendation of appropriate placement". These committees will include: a physician, a psychologist and a teacher or administrator of special education.

It has also been agreed upon that these committees need not be established until such time as the SED-DOCS Memorandum of Agreement is finalized and signed by the respective Commissioners.

3. pp.31-32- Failure to identify all inmates with handicapping conditions

In the meetings with the State Education Department staff regarding how DOCS would comply with the various mandates contained in the Memorandum of Agreement, DOCS staff presented the Department's Extended Classification process at Reception which was developed to identify and assess the program needs and services of all inmates with handicapping conditions. This process was fully approved by SED staff and a significant amount of data has already been collected and has been on file in Central Office since December 1980.

To date, the name, din number, facility, age, and handicapping condition of 500 inmates have been entered into this file.

Due to the critical growth in the inmate population over the past few years and the corresponding need to reduce the amount of time available for initial classification at the Reception Centers, many inmates with handicapping conditions have not been identified.

In order to alleviate this problem additional classification staff would be required especially in the Extended Classification area. A minimum of four additional Special Education staff would be required to ensure complete and timely assessment at the Attica, Bedford Hills, Elmira and Downstate Reception Centers. (Appropriate clerical support, equipment, materials and supplies would also be required.)

4. p. 33 - "Neither the Academic nor the Vocational Program measured achievement of DOCS' educational program purpose: successful reintegration of the inmate with society upon release from prison." (i.e., recidivism)

While "successful reintegration" is not the only goal of Academic and Vocational, we will continue to pursue information from community resources and agencies who have, or assume, responsibility for "successful reintegration".

Of course, we should not be held accountable for a person committing another crime or violating parole.

In order to attempt to at least partially measure the impact of one program on recidivism, a study has recently been conducted in which 1,400 inmates who had participated in the Department's college program and been release within the last five years to determine the relationship between the recidivism rate for these individuals and for the population as a whole. This study indicates that the rate for these college program inmates was 15% as opposed to 38% for the general population. More studies of this kind are planned for the future.

5. pp.33-34- Conformance to SED Standards

The series of meetings between DOCS and SED staff mentioned previously have resulted in general agreement on the most significant issues. SED staff agree completely that the educational programs provided by the DOCS are, of necessity, not the same as those offered in the public schools. Both groups agree that DOCS should attempt to conform to these standards as completely as possible within the security and programmatic constraints present within DOCS. In an effort to fully present these constraints and to define how DOCS could most appropriately conform within the SED standards, a draft Memorandum of Agreement was prepared by DOCS staff, reviewed and revised by SED staff and is currently being reviewed by DOCS staff. A meeting between the appropriate staffs of these two agencies has been scheduled for the end of August 1983 and it is expected that the Memorandum (see attached draft) can be finalized at that point. When that is done and the agreement signed by both commissioners, DOCS staff will immediately begin to implement the terms of the agreement.

-88-

6. pp. 62-64 - Exhibit IV - Agency Compliance to Part 116 Standards

Of the 18 areas of compliance, DOCS is currently in compliance with 10. The areas of non-compliance are listed on the following page showing the Part 116 standard, the modifications recommended by DOCS staff and approved by SED staff and the projected date of compliance.

Part 116 Standard	Modified Standard for DOCS	Projected Date
1. COH at each facility	COH at each Reception Center	April 1984
2. Procedural due process	Inmate Grievance Process*	Currently in place
3. Chief facility administrator to act as Board of Education	DOCS Central Office COH to act as Board of Education	Currently in place
4. Special classes, resource rooms and IEP's provided	No change - DOCS will require 15 Special Education teachers, a Speech and Hearing certified teacher, a Central Office Special Education Program Coordinator plus appropriate equipment, materials, supplies and clerical support	3-months from date resources made available
5. Occupational Education equivalent to public schools	DOCS staff believe that this standard is currently exceeded	
6. Long range educational plans	No change	April 1984
7. Progress report to local school district COH	Progress report to DOCS Central Office COH	May 1985
8. Surrogate parents to be selected	DOCS shall maintain a list of volunteer surrogate parents for each facility	September 1984

* Not yet approved by SED staff

STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION

80 SOUTH PEARL STREET
ALBANY, NY 12207

CHAIRMAN
J. KEVIN McNIFF

COMMISSIONER
KATHARINE WEBB

October 17, 1983

Mr. Sanford E. Russell
Legislative Commission
On Expenditure Review
111 Washington Avenue
Albany, NY 12210

Dear Mr. Russell:

We have reviewed the Revised P & C Report on "Education of Children Under State Care or Custody" and determined that some of the concerns expressed in our response to the first draft have been addressed. However, we find that the revised report includes several statements with which we must take issue. We respectfully offer the following comments on the statements in question.

1. p. 42 - "While COC observes compliance with these guidelines (treatment areas) during field inspections, the extent to which the State's 57 county jails or penitentiaries are following them is not known".

We find the above statement to be a contradiction in terms. It cannot be that we have regularly observed compliance with treatment guidelines and yet do not know the extent of compliance. In fact we do know the extent of compliance through our field inspections as well as through special studies.

2. p. 42 - "Since the 1981 survey, COC and SED have cooperatively developed a federally funded $250,000 BOCES operated program to address the special needs of incarcerated youths in seven (7) county jails. This program will continue through the 1963-84 school year".

The above statement should be expanded to indicate that the BOCES project is intended to develop several program models which can be replicated in other counties in the future. The full thrust of the program is not designed to be limited to the seven (7) participating counties. Further, SED has proposed an amendment to the Education Law in relation to the provision of educational services to jailed youths which would facilitate a district's ability to serve this population via model programs which will be developed in the seven (7) counties.

3. p. 49 - "The educational needs or handicapping conditions of 4,000 youths in local jails were unknown. The Commission of Correction had not promulgated standards mandating that these needs be identified and that school districts responsible for providing educational services to jailed youths be notified of a youth's incarceration".

While we agree that school districts are required by law to provide educational services to jailed youths, this requirement has only recently been acknowledged, as your report recognizes elsewhere. The Commission, however, has no statutory authority to promulgate a standard which would mandate that school districts identify educational needs and handicapping conditions of jailed youths. We have urged local jail officials to contact school districts and to cooperate with them to permit the provision of relevant educational programs which districts are authorized to provide.

4. p. 53 - "Charged to oversee the adequacy of local jail and penitentiary care and to promulgate standards for the care and treatment of jail inmates, the COC had promulgated standards for educational services to jailed youths. However, these were non-mandatory guidelines with little known effect".

It is incorrect to conclude that the presence of non-mandatory guidelines has not had a known effect on the number and substance of local educational programs. Working with local jail officials and with State Educational Department officials, the Commission has assisted numerous counties to develop educational programs. Although new programs have tended to reflect the availability of federal program funds rather than the precise educational needs of incarcerated persons, the nature and scope of local educational programs today is far superior to what existed in the early 1970's. It is certainly fair to conclude that the existence of treatment and guidelines has contributed to this improved state of affairs.

I trust that these comments will be of value to you as you proceed to prepare the final report on this subject.

Sincerely,

J. Kevin McNiff

J. Kevin McNiff
Chairman

JKMcN:bn

STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE • ALBANY • NEW YORK • 12229

ARTHUR Y. WEBB
Commissioner

October 17, 1983

Mr. Sanford E. Russell, Director
State of New York
Legislative Commission on
Expenditure Review
111 Washington Avenue
Albany, NY 12210

Dear Mr. Russell:

The revised preliminary and confidential draft, "Education of Children Under State Care or Custody", has been reviewed by my office. I would like to thank you for the opportunity to review the revised document, amend the agency report, and acknowledge the changes made at the request of OMRDD. OMRDD appreciates the recognition for having corrected most compliance issues as well as the manner in which we were allowed the opportunity to respond to the draft. Also attached is a brief written response to the draft report.

This agency recognizes the large scope of your undertaking in describing the educational programs under the auspices of State agencies. I look forward to receiving your final report and the incorporation of OMRDD's response to that report.

Sincerely,

Arthur Y. Webb
Commissioner

cc: David W. Googins

Right at home. Right in the neighborhood.

REPRODUCTION

OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES RESPONSE TO EDUCATION OF CHILDREN UNDER STATE CARE OR CUSTODY

INTRODUCTION

The revised preliminary copy of the "Education of Children under State Care or Custody" completed by the Legislative Commission on Expenditure Review (LCER) has been reviewed by the Office of Mental Retardation and Developmental Disabilities (OMRDD). OMRDD has appreciated the opportunity to review and suggest revisions to this report, which examines the educational services provided to school age children in the care and custody of state agencies under New York State. This paper includes comments on the LCER draft report, particularly the clarification of findings and specific issues germane to OMRDD.

MAJOR FINDINGS

A brief discussion follows in response to two (2) of the six (6) major findings mentioned in the LCER draft report. Comments are intended to further clarify the position of the Office of Mental Retardation and Developmental Disabilities regarding this issues raised in these two particular findings.

1. State Agencies did not provide educational oversight for their children place in non-agency schools or schools in the community (page S-2);

This agency does, in fact, monitor services to individual children who attend non-agency schools. B/DDSO staff are involved in the programming of school age clients in the community through participation in the development and maintenance of IEPs. OMRDD staff or its certified providers work closely with community schools to ensure that educational services are appropriately provided. In fact, OMRDD is required to obtain information to each client's total program from all service providers.

OMRDD does not, however, monitor the performance of local public school districts. This responsibility rightfully belongs with the State Education Department, and not with several state agencies. The State Education Department has the authority to conduct program reviews for virtually all services for handicapped children in the state. Such reviews assess each program's ability to adhere to Part 200 of the Regulations of the Commissioner of Education, a large part of which includes assurances for the developing of appropriate individualized education programs (committee on the handicapped and school district responsibilities). The detailed and systematic due process provisions of these regulations further protect the rights of each handicapped child. For public and private schools in the community, the responsibility for monitoring the delivery of actual services, and assuring that all the provisions of each client's IEP are met, lies with the local board of education and committe on the handicapped. Therefore, educational oversight for children placed in non-agency schools or schools in the community is provided for OMRDD clients by both OMRDD, SED and the local Board of Education.

2. The State has a complex system of financing educational services for the ten agency child care system and fiscal incentives and disincentives may affect educational placement decisions (page S-2);

In OMRDD, placement decisions are a result of a comprehensive approach to treatment. That is, all dimensions of each individual child, educational concerns included, are considered in any program plan and the collective assessment of the child's needs determines placement. Recommendations for placement are formulated after the client's individual needs are weighed against the available programs' maximum potential to meet those needs. Interdisciplinary Treatment Teams have the responsibility to review the needs of clients and recommend appropriate programming on the basis of documented evaluations. Further, OMRDD adheres to the doctrine of education in the least restrictive environment to the extent that all the needs of a child may be met. Educational placements are then made specifically according to applicable statutes and regulations; which include provisions for the cost of such services. However, OMRDD does recognize the frequently cumbersome process of identifying and implementing payment processes of community educational placements.

As an agency, OMRDD has been fortunate to receive legislative and executive support for a variety of educational funding sources, such as Chapter 47, 66, and 721 as described in the LCER report. These resources allow children to be educated in a setting appropriate to their needs. However, each of these funding sources has its own unique criteria and mechanisms for payment to school districts, making it difficult for a school district to administer the fiscal process. OMRDD would welcome the development of a payment system which would streamline the fiscal responsibilities and fulfillment of payment obligations.

SPECIFIC ISSUES

The specific issues discussed in this section are in response to various comments, terminology and information contained throughout the report. The page of the report referencing the specific issue preceeds each respective discussion.

Page 36, 62-64

OMRDD is puzzled by the reference to SED's December 1982 review of educational programs at 10 of 20 developmental centers. The State Education Department did conduct visits to 10 developmental center programs, however, they occurred between November of 1978 through November 1979. OMRDD considers this information outdated. One additional visit was made in April of 1982, but only recently has SED actually resumed visiting programs at developmental centers.

OMRDD appreciates the acknowledgement that effective March, 1983 most compliance issues have been resolved. However, OMRDD and SED have not agreed upon a target date for full compliance in all areas, pending the resolution of the applicability of some standards. The two agencies have worked cooperatively in order to identify equivalencies or comparable measures of compliance that implement the intent of Part 116, consistent with the needs of OMRDD's children. Those agreed upon standards or equivalencies are not reflected in Exhibit IV "Agency Compliance to Part 116 Standards, March 1, 1983."

Exhibit IV

OMRDD does not agree with all of the findings in Exhibit IV and offers facts and comments for clarification. These clarifications are offered despite the difficulty OMRDD has in differentiating among the terms utilized by LCER in their findings. The distinction between "Compliance" and "General Compliance" is unclear, as is the distinction between "Non-Compliance" and "Typically out of Compliance."

180 School Days Per Year

OMRDD is credited for "General Compliance" regarding the minimum of 180 days of required instruction. In fact, each developmental center is required to submit a school calendar with a minimum of 180 days each year to the Bureau of Education (OMRDD) based on the suggested school calendar published by the State Education Department. Copies of all such calendars are on file at Central Office. Moreover, most education/habilitation services provided at developmental centers are the responsibility of twelve month employees, and programs are further augmented through the use of E.C.I.A., Chapter I funds to provide an Enrichment Program during July and August of each year. Therefore, OMRDD is actually fully compliant with this requirement.

Equivalent Physical Education To That Required In Public School

The State Education Department has acknowledged that physical education as it is known in public schools is not appropriate for OMRDD clients in developmental centers. Instead, occupational therapy, adaptive physical education and physical therapy, as designed and supervised by a licensed occupational therapist and/or physical therapist, are the forms of programmed physical activity acceptable to the State Education Department. Physical education instruction as such may be provided under the supervision of any of the following staff: certified physical education teacher; licensed physical therapist; licensed occupational therapist; or, recreation therapist. Therefore, OMRDD does not agree that it is "Typically out of Compliance" with these standards, given the recognition by the State Education Department of appropriate equivalent standards.

Each Facility Appoint a Committee To Perform COH Function To Include Appropriate Staff

OMRDD has advised each facility director of his/her responsbility to appoint a committee pursuant to Part 116.4 of the Regulations of the Commissioner of Education. Presently, the duties of such committee are either assumed by each client's Interdisciplinary Treatment Team, or a separately appointed Committee on the Handicapped. Therefore, OMRDD, is fully compliant with this standard.

Procedural Due Process To Be Afforded Child and Parent

OMRDD is not yet in full compliance with this standard. However, due process procedures which meet the requirements of Federal and State statutes, have been drafted and shared with LCER staff. SED has been notified that these draft procedures shall be forwarded for approval as soon as they have been internally approved by OMRDD.

All Professional Instructional Personnel Have Required Certificates

The report indicates only "General Compliance" in this area, when current staff is appropriately certified, as governed by Civil Service and State Education Department Standards. OMRDD's review of educational staff statewide showed that of the approximately 180 staff serving school age clients, only seven were not certified in Special Education. These few exceptions remain as a result of previous inconsistencies between Civil Service requirements and State Education Department requirements for instructional personnel. Therefore, OMRDD would more appropriately be described as in "Compliance" in this area.

Each Home Or Facility Prepare Annual And Long-Range Education Plans

OMRDD submitted a proposal to SED to July of 1981 in order to enable OMRDD to meet the requirements of the Long-Range Education/Habilitation plans and Annual Education Plans. It was not until December, 1982 that SED approved this initial plan. However, early 1983 changes in Part 115 of the Regulations of the Commissioner of Education necessitate further clarification from SED. Until the implications of these revised standards are determined, OMRDD is unable to achieve compliance.

Appropriate Pupil Attendance And Academic Record Management

The report indicates "Typically out of Compliance" in this area. OMRDD does not agree with this finding, because OMRDD maintains attendance on all clients, and Part 116 does not address academic record "management". Therefore, criteria for judging compliance to "academic record management" is unknown to OMRDD. However, records are maintained according to the rigid requirements of the ICF/DD regulations. The information in these records must meet both federal and state regulations. Thus, OMRDD would more accurately be described as compliant for this category.

Surrogate Parent To Be Selected Where Child's Natural Parents Are Unavailable Or Child Is Ward Of The State

Procedures for the selection of surrogate parents are included in the draft OMRDD education/habilitation policies presently under final review by OMRDD.

CONCLUSION

In conclusion, OMRDD is please with the accomplishments it has achieved thus far in providing for the educational and habilitative needs of children in its care. Major strides in the delivery of services have been made as more and more children participate in community programs in accordance with their developmental needs.

OMRDD is committed to providing appropriate education/habilitation services to children in its care, and will continue to pursue compliance in all areas relative to the developmental needs of school age children.

NEW YORK STATE
OFFICE OF MENTAL HEALTH
44 Holland Avenue, Albany, New York 12229

STEVEN E. KATZ, M.D., Commissioner

October 20, 1983

Mr. Sanford E. Russell
Director
Legislative Commission on
Expenditure Review
111 Washington Avenue
Albany, New York 12210

Dear Mr. Russell:

Thank you for forwarding the Legislative Commission on Expenditure Review's revised draft report entitled "Education of Children Under State Care or Custody." I have been informed that the majority of the Office's comments to the first draft report have been incorporated in the revised document.

Enclosed are several additional comments and supporting information concerning issues which, from the Office's perspective, require additional consideration of the Legislative Commission.

It is hoped that this information will be helpful to you in completing your report. Should you have any additional concerns, please feel free to contact my office or Dr. David Doty, Acting Director, OMH Bureau of Children and Youth Services.

Sincerely yours,

Steven E. Katz, M.D.
Commissioner

Enclosure

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Legislative Commission on Expenditure Review REVISED Report

Education of Children Under State Care or Custody

The comments which follow pertain to the revised report entitled Education of Children Under State Care or Custody prepared by the New York State Legislature, Legislative Commission on Expenditure Review (LCER). The underlined captions reference sections of the report to which the Office of Mental Health is addressing comments. The number(s) in parentheses refer to corresponding page(s) in the report.

Major Findings (pg. S-2)

The report states that "Complete and accurate data on educational characteristics placement, and progress of children in care were not available. Of the ten State agencies only OMRDD had educational performance information for all children in its care. For the other nine it was not possible to assess whether youngsters in care of State agencies were receiving appropriate instruction and making satisfactory educational progress.".

- o This section of the report should be revised to indicate that OMH and its facilities maintain and regularly review information relative to the educational placement and performance of all school aged patients in its care.

  The education records of patients, maintained by all facilities, include education evaluations (among others), Phase I IEPs, pre- and post-test data as well as other measures of achievement, and periodic education progress reports developed by the pupils' teacher(s).

  In addition, OMH requires facilities to complete the "Annual Federal Evaluation Report of Programs for Pupils with Handicapping Conditions" containing student performance data including data/information on:

  - numbers of pupils who met 75% of their objectives in specific curriculum areas
  - classroom activities, methodology
  - materials/equipment
  - promising educational activities

  This information is shared with SED for their review and analysis.

In addition, for those inpatients attending private or public schools (including BOCES), facilities are required to assign a staff liaison to maintain regular contact with the school. One of the functions of these liaisons is to monitor the student's school program, including his/her academic, social and emotional progress.

PROGRAM OVERVIEW

SED Monitoring - Compliance with Part 116 (pgs. 62-64)

A modification of the compliance ratings in the report assigned to the following Part 116 standards is requested: 5½ Hour School Day; 180 School Days per Year; Equivalent Instruction to that Offered of Public Schools; Equivalent Physical Education to that Required of Public Schools; and Chief Administrator of each Facility Exercise Duties of Board of Education.

The ratings in the draft report were based upon dated SED monitoring reports. A number of the ratings associated with these standards were revised at OMH's request. The following reasons are being presented for those ratings which continue to require revision:

- o 5½ Hour School Day - Initial monitoring reports issued by SED failed to take into consideration treatment services/programs ("related services") provided to patients in addition to classroom instruction, resulting in citations for not providing 5½ hour school days.

  Consistent with the DRAFT Memorandum of Agreement (MOA) developed by OMH/SED, time spent in clinical/treatment services listed on a patient's IEP is now considered part of the school day. Consequently, SED recognizes as of 3/83 that OMH facilities provide 5½ hour (5 hours at the elementary level according to SED regulations) school days to patients.

  Therefore, the rating of "Typically out of Compliance" should be amended to indicate compliance with this standard.

- o 180 School Days per Year - All OMH facilities operating school programs adhere to a standardized school calendar which provides for a minimum of 184 to 187 school days. Facility calendars, once discussed with union representatives, and approved by OMH, constitute the official work schedule for all OMH educators. OMH guidelines for the development of calendars are based upon and consistent with SED's suggested school calendar for public schools. The Education Coordinator annually reviews all facility calendars to assure compliance with the requirement of a minimum of 180 school days (see attached OMH guidelines for the 1982/83 school calendar).

  Therefore, the rating of "General Compliance" should be upgraded to "Compliance" with this standard.

- o Equivalent Instruction to that Offered of Public Schools - The report indicates that this standard is "not applicable" to OMH. Part 116.1d requires that "Instruction shall be provided (by OMH) equivalent to that required by Education Law 3204 and Part 100 of these regulations." OMH facilities provide instruction in "core" subjects to all patients (as indicated on pg. 55 of the report). Page 56 of the report further indicates that "Other course options are available to the clients (patients) based on individual needs and interests."

  Therefore, the report should be amended to indicate "General Compliance" with this standard.

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- Equivalent Physical Education to that Required of Public Schools - All OMH facilities provide physical education and/or Recreation Therapy to school aged patients. Commensurate with the draft MOA (dated 2/8/83), facilities which do not employ certified physical education teachers to provide a program of physical education may request a waiver of this certification requirement from SED in order that Recreational Therapists can continue to provide programs of athletic, physical and leisure activities comparable to those required by Sections 135.1 and 135.4 of the Regulations of the Commissioner of Education. This provision of the MOA enables all facilities which do not have physical education teachers to comply with this standard.

  Therefore, the rating of "Typically out of Compliance" should be amended to indicate "General Compliance" with this standard.

- Chief Administrator of each Facility Exercise Duties of Board of Education - As indicated in our response to the original draft report, OMH's Education Requirements issued in July, 1982 (reissued June, 1983) assigns the Chief Administrator of a facility, or his designee, the responsibility for the appointment of facility committees as well as the execution of those duties/responsibilities assigned to Boards of Education in the public schools (pertinent to the education of handicapped pupils).

  In a majority of OMH facilities reviewed by SED to date, these duties and procedures are being performed by facility administrators; although in not all cases have the appropriate procedures been formalized in the form of facility policy.

  Therefore, the rating of "Typically out of Compliance" should be amended to indicate "Partial Compliance" with this standard.

STATE OF NEW YORK
DIVISION OF ALCOHOLISM AND ALCOHOL ABUSE
194 WASHINGTON AVENUE, ALBANY, NEW YORK 12210

Robert A. Ross
Acting Director

August 24, 1983

Mr. Sanford E. Russell
Director
NYS Legislative Commission
on Expenditure Review
111 Washington Avenue
Albany, New York 12210

Dear Mr. Russell:

I appreciate the opportunity to make comments or clarifications of the preliminary and confidential draft Legislative Commission on Expenditure Review (LCER) program audit "Education of Children under State Care or Custody." It is important to put the educational issue raised by LCER in context. I want to emphasize that residential alcoholism treatment in the state operated alcoholism treatment centers is short term (average 35 days), voluntary, and children are not in legal custody of the Division. Custody remains with the parent(s) or surrogates designated in accordance with statutes. In locally operated programs the children who receive services are not in the Division of Alcoholism and Alcohol Abuse (DAAA) care or custody.

May I turn to some specifics on your report:

pp. S-3-S-4 Nominal Educational Services

Paragraph #1, sentence #3 comment: DAAA does require Alcoholism Facilities Class programs (Part 84 and proposed Part 331, Title 14 NYCRR) to develop and implement a comprehensive treatment plan based on a range of professional assessments for a locally operated inpatient rehabilitation program. In addition, the Division requires community residential programs to establish comprehensive services plans for all residents, including educational services as provided for in 14 NYCRR 86 and Division Guidelines for compliance with the Standards (April 1982). These requirements are not age specific and do not reference the Compulsory Education Law. The Commission statement may be misleading to the reader.

Paragraph #1, sentence #4, comment: The standards compliance monitoring by the Division does include review of the extent to which the above types of residential programs have educational services available to patients and residents (direct or indirect). Where services are directly provided, the Division does monitor both their availability and appropriateness for individual patients.

Paragraph #3, sentence #1 comment: It is not clear what the Commission means by the term "local child care agencies". However, only one agency serving youth receives Division funding for a residential program (community residence), and this is licensed by the Division of Substance Abuse Services. In general, alcoholism services for youth are provided on an outpatient basis.

Fiscal Implications of Funding

Paragraph #1 sentence #1 comment: The report deals generally with "children in state agency care or custody". In state operated alcoholism treatment centers custody in the legal sense remains with the parent(s) or surrogates designated in accordance with statute. In locally operated programs the children who receive services are not in either Division care or custody.

P 46 Children in Alcoholism Rehab

Paragraph #2, sentence #1: The Commission and the Division would be well served if the sentence were modified to include the following suggested addition: "including approximately 56 residential programs." This change would provide more accurately the number of residential programs.

I hope these comments can be included in the final LCER report, as they reflect what I believe to be an accurate context in which the DAAA provides residential services to children.

Sincerely,

Robert A. Ross

Robert A. Ross
Acting Director

RAR:bi

STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

DAVID AXELROD, M.D.
COMMISSIONER

August 12, 1983

Dear Mr. Russell:

This is in response to the Legislative Commission on Expenditure Review's preliminary report regarding, "Education of Children Under State Care or Custody".

The Commission's report noted that the Helen Hayes Hospital is the only facility within the Department of Health which conducts formal educational programs for children. I am pleased to advise you that the Hospital is now in full compliance with all appropriate State Education Department (SED) requirements. Enclosed is a copy of a July 19, 1983 letter from the SED attesting to that fact.

The Commission's report also indicated that nursing homes, which are licensed by the State Department of Health, were not being monitored by SED for educational program compliance. Since this is properly a SED responsibility, we have no comment on that portion of the report.

Thank you for sharing this report with us.

Sincerely,

David Axelrod, M.D.
Commissioner of Health

Enclosure

Mr. Sanford E. Russell
Director
Legislative Commission on
Expenditure Review
111 Washington Avenue
Room 400
Albany, New York 12210

STATE OF NEW YORK
DIVISION OF SUBSTANCE ABUSE SERVICES
Office of Alcoholism and Substance Abuse
EXECUTIVE PARK SOUTH
ALBANY, NEW YORK 12203

JULIO A. MARTINEZ
Director

October 12, 1983

Mr. Sanford E. Russell
Director
State of New York
Legislative Commission on Expenditure Review
111 Washington Avenue
Albany, NY 12210

Dear Mr. Russell:

Thank you for your 9/30/83 letter, enclosing a copy of the revised preliminary and confidential d aft program audit, "Education of Children Under State Care or Custody." The Division has reviewed your revised draft and, at this time, does not have any additional comments or amendments to make to the draft audit report.

As we read the original draft, and now that we have seen the revised draft, it is apparent that you have gathered quite a bit more information from the affected state agencies. What the revised draft does reflect is the fact that the essence of the problem at hand seems to be the lack of clarity in the Compulsory Education Law. We would suggest that the Legislative Commission on Expenditure Review turn some of their attention to the law itself and address the problems in the statute with the Legislature.

Again, thank you for keeping us apprised of what is happening with this audit.

Sincerely,

Norwig Debye-Saxinger
Acting First Deputy Director

cc: Nancy Burton

PROGRAM AUDITS* OF THE
LEGISLATIVE COMMISSION ON EXPENDITURE REVIEW

DOT Real Estate Program, April 15, 1976.

Solid Waste Management in New York State, May 20, 1976.**

Boards of Cooperative Educational Services Programs, June 28, 1976.**

Boards of Cooperative Educational Services Finances, June 30, 1976 **

Workmen's Compensation Program for State Employees, July 30, 1976.**

Public Pension Fund Regulation, October 29, 1976.

Computers in New York State Government, December 1, 1976.**

Health Planning in New York State, January 3, 1977.**

The Optional Service Charge Law, March 11, 1977.

Immunization of Children, May 27, 1977.

State Parks and Recreation Program, October 11, 1977.

State Travel Costs, December 15, 1977.**

Venereal Disease Control, December 16, 1977.

State Environmental Permits, December 19, 1977.

Pupil Transportation Programs, January 30, 1978.**

Housing Maintenance Code Enforcement in New York City, March 31, 1978.

Vacation Credit Exchange, June 16, 1978.

Adirondack Park Planning and Regulation, July 31, 1978.

School Food Programs, August 7, 1978.

SUNY Developing and Nontraditional Colleges, September 26, 1978.

Newborn Metabolic Screening Program, October 31, 1978.

Fiscal Effect of State School Mandates, December 20, 1978.

School District Budget Voting and Contingency Budgeting, December 26, 1978.

State Aid for Operating Sewage Treatment Plants, April 16, 1979.

Crime Victims Compensation Program, April 23, 1979.

Drinking Driver Program, May 15, 1979.

Unemployment Insurance for State Employees, July 20, 1979.

Work Programs for Welfare Recipients, August 3, 1979.

CETA Programs in New York State, August 24, 1979.

Parole Resource Centers Program *(Research Report)*, August 31, 1979.

Local Government Use of State Contracts, October 15, 1979.

Use of State Adult Psychiatric Centers, February 29, 1980.

National Guard Strength and Armories, March 17, 1980.

School District Committees on the Handicapped, April 15, 1980.

Delinquency Prevention and Youth Development Programs, May 2, 1980.

Energy Use in State Facilities, June 11, 1980.

Occupational Education in Secondary Schools, July 8, 1980.

Use of State Developmental Centers, November 6, 1980.

Energy Research and Development Programs, December 24, 1980.

State Subsidized Low Rent Public Housing, December 31, 1980.

Taxpayer Services Program, March 9, 1981.

Title XX Social Services, March 13, 1981.**

State Prison Inmate Health Services, June 19, 1981.

Runaway and Homeless Youth, July 15, 1981.

State Mandates to Counties *(Research Report)*, August 14, 1981.

Control of the State Telephone System, August 21, 1981.

Hospital and Nursing Homes Management Fund, October 5, 1981.

Methadone Program, December 21, 1981.

Regulation of Automotive Repair Shops, December 24, 1981.

School District Cash Management, December 29, 1981.

Pupils With Special Educational Needs, April 30, 1982.**

State Division of Probation Programs, June 10, 1982.

State Physician Shortage-Maldistribution Programs, July 16, 1982.

Commission on Cable Television, September 15, 1982.

Management of Youth Rehabilitation Programs, October 29, 1982.

Impact of Youth Rehabilitation Programs *(Research Report)*, October 29, 1982.

Council on the Arts Application Review and Funding, November 29, 1982.

The Weatherization Assistance Program, December 6, 1982.

SUNY Hospitals, February 28, 1983.

Dormitory Vandalism on SUNY Campuses, March 24, 1983.

Procurement of Consulting Services *(Memorandum Report)*, March 31, 1983.

Processing of Human Rights Cases, April 25, 1983.

Contractual Social Services Training Programs, June 3, 1983.

Comparative Resident and Non-Resident Tuitions, Enrollments and Policies in the Fifty States *(Memorandum Report)*, June 7, 1983.

State Operated Ski Centers, September 30, 1983.

Mental Health Community Support System, October 28, 1983

Education of Children Under State Care or Custody, November 30, 1983

*Excludes 45 reports printed 1971 through 1975. A list of these publications may be obtained by request of the Commission.

**Out of print; loan copies available upon request.

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